ATES.

ARTNEY

SMITH.

TRANSCRIPT OF

SUPREME COURT OF THE UNITED STATES.

No. 1096.

EDWARD BONHAM, EDWIN BEECHER, JAMES McCARTNEY AND ADAM RINARD, APPELLANTS,

vs.

THOMAS B. NEEDLES, AUDITOR, AND JOHN C. SMITH, TREASURER OF THE STATE OF ILLINOIS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 8, 1880.

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1 Pleas in the circuit court of the United States for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district court, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, pro tempore sole judge of said court, on Monday, the 13 day of September, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty and of our Independence the one hundred and fifth year.

J. A. JONES, *Clerk.*

(Title of cause.)

EDWARD BONHAM, EDWIN BEECHER, JAMES McCartney, & Adam Rinard, *vs.* THOMAS B. NEEDLES, AUDITOR OF ILLINOIS; Jno. C. Smith, treasurer of Illinois; 2 John Morris, treasurer of Wayne County, Illinois; Joseph D. Shaeffer, county clerk of Wayne County, Illinois; George M. Book, collector of Big Mound township, in Wayne County, Illinois; The First National Bank of Springfield, Illinois; the unknown owners and holders of the bonds & coupons issued by Big Mound township, dated April 1st, 1870; and John A. Kernochan.	5811.	In equity.

Be it remembered that on the 1st day of December, A. D. 1879, came the said defendants, by their solicitors, and filed in said court the transcript of proceedings had in said cause in the circuit court of Wayne County, Illinois, said transcript being in the words following, to wit:

Transcript of proceedings in Wayne County Circuit Court, Illinois.

In circuit court, October term, A. D. 1879.

UNITED STATES OF AMERICA,
State of Illinois, Wayne County, ss:

3 Pleas, before the honorable Chauncey S. Conger, judge of the second judicial circuit of the State of Illinois, and sole presiding judge of the circuit court of Wayne County, in the State aforesaid, and at a term thereof begun and held at the court-house, in the town of Fairfield, in said county, on the third Monday (being the twentieth day) of October, in the year of our Lord one thousand eight hundred and seventy-nine and of the Independence of the said United States the one hundred and third.

Present, honorable Chauncy S. Conger, judge of the second judicial circuit of the State of Illinois; R. E. Mabry, clerk; Alexander M. Funkhamer, States attorney; Adam Rinard, sheriff.

Attest.

R. E. MABRY, *Clerk.*

Be it remembered that at said term of court the following order was made and entered of record, viz:

4 *Orders in State court.*

EDWARD BONHAM ET AL. *vs.* THOMAS B. NEEDLES ET AL. } Bill to cancel bonds of Big Mound Township.

And now, on this second day, come the complainants, by James McCartney, their solicitor, and the respondents, by G. A. Sanders, their solicitor; and John A. Kernochan, one of the respondents herein, by G. A. Sanders, his solicitor, files his petition and bond for a removal of this cause to the United States court at Springfield, Illinois. And the court, after hearing the aguments of the counsel herein, orders, adjudges, and decrees that this cause be removed to the circuit court of the United States for the southern district of Illinois; and it is further ordered that the clerk of this court make out a full and complete copy of the records of this cause, together with a copy of all the papers filed herein, and that he certify and transmit the same to the circuit court of the United States at Springfield for the southern district of Illinois.

5 STATE OF ILLINOIS,
Wayne County, ss:

I, R. E. Mabry, clerk of the circuit court in and for the county of Wayne, and State of Illinois, do hereby certify that the above and foregoing is a true, perfect, and complete copy of the records and proceedings of a cause lately pending in the Wayne County circuit court, wherein Edward Bonham et al. were plaintiffs, and Thomas B. Needles et al. were defendants; and I further certify that the papers therein filed are truly copied.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Fairfield, this 15th day of November, A. D. 1879.

WAYNE COUNTY CIRCUIT COURT SEAL, ILLINOIS.

R. E. MABRY,
Clerk of Wayne County Circuit Court.

6 *Bill of petitioners.*

To the honorable the judges of the circuit court of the second judicial circuit of the State of Illinois in chancery sitting, in and for the county of Wayne, and State of Illinois:

Your orators, Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard, would respectfully represent unto your honors that they are owners of real estate and tax payers in the township of Big Mound, Wayne County, Illinois; that on the 25th day of February, A. D. 1867, the legislature of the State of Illinois passed an act entitled "An act to incorporate the Illinois Southeastern Railway Company"; which was approved by the governor of said State of Illinois and went into full force and effect on the day last mentioned; that by said act Charles A. Beecher, Joseph J. R. Turney, Robert P. Hanna, Carrol C. Boggs, Joseph T. Fleming, Henry Holtzhauser, and Edward Bonham, of Wayne County, and John W. Wescott, William B. Wilson,
7 David McCawley, and William H. Hanna, of Clay County, their associates, successors, and assigns, were created a body politic and corporate under the name and style of "The Illinois Southeastern Railway Company"; and that said company should have full power and

authority to locate, construct, finish, equip, and maintain a railroad with one or more tracks commencing at some suitable point on the Chicago branch of the Illinois Central Railroad, not north of Mason, in Effingham County, nor south of Kinmundy, in Marion County, running thence by such line as shall by them be deemed most convenient by way of Fairfield, in Wayne County, to the Ohio River, at any point not south of Metropolis City, nor north of Shawneetown, and should also have full power and authority to locate, construct, finish, equip, and maintain a branch of said railroad with one or more tracks upon such line as they may deem most convenient from Fairfield, in Wayne County,
8 to the great Wabash River at any point, not further north than Granville on said river.

That the capital stock of said company might consist of one million dollars, which might be increased to any sum not exceeding six millions, to be divided into shares of one hundred dollars each. That the affairs of said company should be controlled and managed by a board of directors consisting of eight persons, which might be increased to any number not exceeding thirteen; and that Charles A. Beecher, Joseph T. Fleming, William H. Hanna, Joseph J. R. Turner, Carroll C. Boggs, Edward Bonham, William B. Wilson, and John W. Wescott, were appointed the first board of directors; that said directors should have the power electing out of their number a president, secretary, and treasurer, and such other officers as their by-laws might provide for.

That the said company should have power to unite its railroad with any other railroad now constructed, or which might hereafter
9 be constructed; or said company might purchase or receive by donation the corporate, franchise, property, or privileges, or any part of either, of any other railroad company whose charter confers power to construct a railway through or into Wayne County upon such terms as may be agreed upon by and between the companies, or their successors, or assigns, interested.

That any town, in any county, under township organization, was thereby authorized and empowered to donate to said company any amount not to exceed thirty thousand dollars; provided that no such donation, by any such town to said company, should be made unless the question of making such donation should have been first submitted to the legal voters of said town at an election thereinafter provided for; that no donation so made, nor any part thereof, nor any interest accruing thereon, or upon any part thereof, should be paid, or become due, or payable to said company until said company or its assigns, or employes, should have completed their said railroad, or some certain part of said road or its branches as may
10 have been agreed upon by the contracting parties. No such election, for the purpose of submitting the question of making a donation by any such town, authorized by the former section of said act, above recited, to donate to said company, should be held until the directors of said company should have filed a proposition to the inhabitants of said town with the county clerk of the county wherein such town is situate, and a copy of the same with the clerk of said town, and if there was a newspaper published in such county, said proposition should be published in full in the same, whereupon it should be the duty of the clerk of such town to post up written or printed notices of the time and place of holding such election in at least ten public places in such town, together with a copy of said proposition at least twenty days before the day for holding such election; at which election the legal voters of such township should vote for or against such proposition, and if a majority of all the votes cast be for such proposition

the trustees of the said town should so certify the same to the
11 clerk of the county court of the county wherein the town is situated, and such county clerk should, upon the application of the company, after the donation so voted by any such town should have become due and payable under the terms and conditions of the proposition upon which said election was ordered, compute and assess upon all the taxable property in said town an amount sufficient to pay such donation or any part or installment of the same so then being due and payable; which tax so assessed should be collected as other taxes; and the taxes so collected should be paid to the treasurer of said company, and the election above provided for should be held, canvassed, and returned as other regular town elections. That said company should organize under the provisions of said act within one year after the passage of said act, and should commence the construction of said railroad in good faith within three years, and should complete the same within twenty years.

Your orators would further represent unto your honors that
12 they are informed and believe that said company did organize as corporation within one year from the passage of said act, and did commence the construction of said railroad in good faith within three years from the date of said act, but they deny that said company ever completed said railroad, but that on the 3rd day of December, A. D. 1869, the said Illinois Southeastern Railway Company was dissolved, disbanded, and passed out of existence, and has never since been revived.

Your orators would further represent unto your honors that it is claimed that Big Mound Township voted to donate the sum of five thousand dollars to said Illinois Southeastern Railway Company to aid in the building of said railroad; but your orators deny that any such vote was ever had, or any election held for such purpose in said township; that it is also claimed that said township of Big Mound has issued its bonds in the said sum of five thousand dollars, dated April 1st, 1870, and due April 1st, 1890, with interest coupons thereto attached, by which said township it is claimed has agreed to pay ten per cent.
13 interest thereon, payable semi-annually, on the first days of January and July of each year until due, and which bonds it is claimed are registered in the office of the auditor of the State of Illinois, and are now claimed to be held and owned by different parties, all of whom are unknown to your orators, and upon diligent inquiry the names and places of residence of the said holders cannot be ascertained or learned by your orators. But your orators now state the facts to be that if any such bonds purporting to be the bonds of said Big Mound Township are in existence or ever have been they are in fact not the bonds of said Big Mound Township, and that they were not issued by the authority or consent of the said township or its corporate authorities, and are of no binding force upon said township, and that they are utterly null, void, and of no effect as obligations of said township.

Your orators would further represent unto your honors that as
14 they are informed and believe on the 28th day of February, A. D. 1867, an act was passed by the legislature of the State of Illinois and approved by the governor on said day, entitled "An act to change the time of electing certain officers in a county therein named," by which act it was provided that the board of supervisors in Wayne County shall consist of five persons, to be elected in the following manner, to wit: The townships of Four Mile, Hickory Hill, and Arrington shall constitute the first electoral district of said county, and

shall be entitled to one member of said board; the townships of Big Mound, Lamard, Jasper, and Barnhill shall constitute the second electoral district in said county, and shall be entitled to two members of said board, &c. That there shall be elected on the first Tuesday in April, one thousand eight hundred and sixty seven, and every four years thereafter in each of said electoral districts one member of the board of supervisors of said Wayne County, who shall each hold their office for the term of four years, or until their successors are
15 elected and qualified except in the second district of said county, which shall elect two members of said board, who shall hold their office for the said term of four years and until their successors are elected and qualified. That said board, when organized, shall do and perform all duties enjoined upon the board of supervisors acting under the general township organization laws of this State, and shall have all the powers and privileges of boards of supervisors acting under such general township organization laws. That all duties not therein provided for to be done and performed by virtue of the township organization laws of this State by the supervisors of towns in the different towns, shall be done and performed in said county by a justice of the peace in such town, who shall be selected by the town clerk, town assessor, and town collector for that purpose, each year, as soon as practicable after the election of town officers in such town; and said town clerk, assessor, and collector, shall have power to fill the vacancy occasioned by death, resignation or refusal to serve of said justice
16 of the peace. Such justice of the peace so appointed shall hold such appointment for the term of one year and until his successor shall be appointed; and his appointment shall be entered of record by the township clerk. But nothing in this act shall be construed to change or in any manner affect the places or manner of voting as now established by law in the different precincts in said county, which act was declared to be a public act and to be in force from and after its passage.

But your orators would represent unto your honor that said act was not a public act as therein stated, but was to every intent and purpose, and in every respect, a private act. That said act was in violation of that section of the constitution of the State of Illinois, being section 23 of article 3 of said constitution, which provides that no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title. That said
17 act was never passed by the legislature of the State of Illinois (said act never having passed the senate nor house of representatives of said State) as required by the constitution of said State, and it therefore never in fact became a law of said State.

Your orators would further represent unto your honors that it is now claimed that the bonds, to the amount of five thousand dollars, of Big Mound Township, were issued by Miles H. Harris and J. B. Borah, claiming to be supervisors of the second district of said county, so designated in said last-named act, and signed by them as such supervisors, and also countersigned by William Book, as deputy town clerk of said Big Mound Township; but your orators say if such bonds were issued they are void and of no effect or force as obligations of said township, because no persons having any authority ever issued said bonds, said district supervisors, if there were any such, having no authority to issue or sign said bonds so as to bind said township, and there being no such officer as deputy town clerk, and that neither said

Harris or Borah resided in said Big Mound Township, or were supervisors or officers thereof.

Your orators would further represent unto your honors that in the year 1869, at a session of the legislature of the State of Illinois held in said year, an act was passed and approved by the governor, on the 24th day of February, A. D. 1869, entitled "An act to amend an act to incorporate the Illinois Southeastern Railway Company," wherein and by which act it was provided that the corporation heretofore organized and known as the Illinois Southeastern Railway Company, by virtue of an act approved February 25th, 1867, shall have all the powers, rights, privileges, and immunities which have been heretofore granted, and such other powers, rights, privileges, and immunities as are hereinafter provided for; and all subscriptions to the capital stock, or donations or gifts to said railway company, whether made by individuals, townships, counties, or corporations shall be and are by this act legalized, and the said company is hereby empowered and authorized to collect and use the same upon the conditions so donated and subscribed.

And it is further provided in said act that whereas certain townships in Wayne and Clay Counties have voted donations to said railway company, said townships are hereby authorized and empowered to issue township bonds for the amount so donated without submitting the proposition again to be voted upon; said bonds to be issued in sums not less than one hundred nor more than one thousand dollars each, with interest coupons attached drawing interest at the rate of ten per cent. per annum, payable semi annually at the county treasurer's office in each county where such townships are located, said bonds to be payable in five years or any time thereafter not exceeding twenty years at the option of the townships, and said bonds to be signed by the supervisors thereof or by the supervisor or supervisors of the district wherein such township is located, and to be countersigned by the township clerk of the respective townships; and said bonds to be delivered properly executed to the president of said railway company when the conditions are complied with as contained in election notices and propositions submitted to and voted upon by the people of said townships; and said townships shall each by its proper corporate authorities provide in due time, by a levy and collection each year of a sufficient tax on its assessed property, to pay the interest on its bonds as it accrues half-yearly as aforesaid, and ultimately to provide for the principal of said bonds at maturity: Provided that such townships may determine by a vote of their electors at any regular or special town meeting or election whether they will issue bonds or not in payment of the donations heretofore voted to said company. That the said Illinois Southeastern Railway Company shall have power and the right to connect with the Chicago branch of the Illinois Central Railroad at any point not north of the city of Effingham, and may continue its railway in a northwesterly direction to any point on the Mississippi River not north of Rock Island and not south of Quincy, to build branches, &c., and shall have power to unite, connect, or consolidate its railroads with any other continuous line of railroad constructed or in the course of construction or which may hereafter be constructed in this State, upon such terms as may be agreed upon between the companies so uniting, connecting, or consolidating, and for that purpose full power is hereby given to said company to make and execute such contracts with any other company as will secure the objects of such connection or consolidation; and said company may futhermore lease, purchase, or receive as a donation any other road or part of road

either wholly or partially constructed which may constitute or be adopted as a part of its main line or branches, and by such lease, purchase, or donation it shall acquire and become vested with all the rights and franchises pertaining to such road or part of road
22 so leased, purchased, or donated in the right of way, donations, constructions, maintainance, and working thereof. Provided that such consolidations shall be subject to the general railroad law of 1849. That any village, city, county, or township organized under the township organization law or any other law of this State along or near the route of said railway or its branches, or that are in any wise interested therein, may in their corporate capacity subscribe to the stock of said company or make donation to said company to aid in constructing and equipping said railway: Provided that no such subscriptions or donations shall be made until the same shall be voted for as hereinafter provided, &c., and said bonds in case of a township should be signed by the supervisor thereof, and countersigned by the clerk of said township, &c., and your orators would represent unto your honors that the said law of 1869 is unconstitutional, because it is a local law and does
23 not in its title specify its objects, as required by the said constitution, and embraces more than one subject and does not express said subjects in its title; that said law is retrospective in several of its objects, and that it cannot be employed to legalize void acts.

Your orators would further represent unto your honors that it is claimed that by the foregoing laws of the State of Illinois bonds issued and signed by persons claiming to be district supervisors and countersigned by a person representing himself as deputy town clerk are legal and binding obligations of said township of Big Mound, and that the said bonds and interest thereon shall be paid by the tax-payers of said township, and that a tax shall be levied on all the taxable property of said township to pay the same, all of which your orators deny.

Your orators would further represent that it is claimed that bonds as above described, amounting to the sum of five thousand dollars, with interest coupons thereto attached drawing interest at the rate of
24 ten per cent. per annum payable semi annually on the first days of July and January in each year, each dated April 1st, 1870, and due April 1st, 1890, and signed by M. H. Harris and J. B. Borah, purporting to be supervisors, and William Book, claiming to be deputy township clerk of Big Mound Township, have been registered in the office of the auditor of the State of Illinois, and that Thomas B. Needles, as said auditor, is about to issue an order or warrant under the seal of his office to the county clerk of Wayne County, Illinois, ordering and directing him to compute and extend a tax upon the taxable property of the said Big Mound Township to pay the interest upon said bonds to the amount of five hundred dollars, being one year's interest on the said void bonds, and when said tax is so computed and extended that the collector of said Big Mound Township and the county treasurer of said Wayne County shall collect the same and pay it over to the State treasurer, who will pay the same out to the holders of the
25 said fraudulent and void bonds or coupons, and that unless restrained that said auditor will continue to order the computation, extension, levy, and collection of taxes each year to pay said coupons and eventually said bonds so illegally issued and void as aforesaid. That the First National Bank of Springfield, Illinois, is the owner or holder of a portion of said bonds, but what amount is unknown, and that the owners or holders of the remainder are wholly unknown to your orators, and upon diligent inquiry they cannot be found.

Your orators would therefore pray that Thomas B. Needles, as auditor of the State of Illinois; John C. Smith, as treasurer of the State of Illinois; John Morris, as county treasurer of Wayne County, Illinois; Joseph D. Shaeffer, as county clerk of Wayne County, Illinois; and George W. Book, as collector of Big Mound Township; the First National Bank of Springfield, Illinois, and the unknown owners and holders of the bonds and coupons claimed to be issued by Big Mound Township, dated April 1st, 1870, signed by M. H. Harris and J. B. Borah, claiming to be supervisors, and countersigned by Wm. Boak,
26 claiming to be deputy clerk of Big Mound Township, and payable to the Illinois Southeastern Railway Company, or bearer, due April 1st, 1890, or sooner, if so elected, &c., be made parties defendant to this bill of complaint by the names, titles, and designations as aforesaid; that they be each required to make true answers to the allegations of the foregoing bill of complaint, but not under oath, the oath thereto being hereby waived, and that upon a final hearing of this cause that your honors will order, adjudge, and decree that the said bonds and coupons purporting to be issued by Big Mound Township be declared to be null, void, and of no effect against said Big Mound Township, or the taxable property therein; that said bonds and coupons be ordered by the court to be brought into court and filed with the clerk thereof, and by him canceled and destroyed, and the said auditor of State and county clerk of Wayne County, Illinois, be perpetually enjoined from computing or extending any tax, or ordering or causing the same to be com-
27 puted or extended, against any of the taxable property of Big Mound Township; that the treasurer of the State of Illinois, the treasurer of Wayne County, Illinois, and the collector of Big Mound Township be each perpetually enjoined from collecting, or offering to collect, or from paying over to any one holding or claiming to hold any of the bonds or coupons above described purporting to be issued by said Big Mound Township to the Illinois Southeastern Railway Company, dated April 1st, 1870, signed by M. H. Harris, J. B. Borah, supervisors, and countersigned by William Book, deputy town clerk, or town clerk, and ordering that if any money is then in their hands collected from the taxable property of said township for the purpose of paying any part or all of the said bonds and coupons, that the same be returned and paid over to the supervisor of said township, to be held and used by him as other revenues of said township; that your orators, being owners of real estate and tax payers in said township, and the
28 other owners of real estate and tax payers therein being very numerous, your orators ask that they may be permitted to prosecute this action for their own benefit, and that of all other tax payers of said township, and that the benefits and advantages that may accrue therefrom may be for the benefit and advantage of all other tax-payers of said Big Mound Township, and that your honors will grant such other and further relief in the premises as to equity and good conscience may belong, your orators will ever pray, &c.

EDWARD BONHAM,
EDWIN BEECHER,
JAMES McCARTNEY,
ADAM RINARD,
Petitioners.

EDWIN BEECHER and
JAMES McCARTNEY,
Solicitors.

Chancery summons.

STATE OF ILLINOIS,
Wayne County, ss:

29 The people of the State of Illinois to the sheriff of Sangamon County, greeting:

We command you that you summons Thomas B. Needles, as auditor of the State of Illinois; John C. Smith, as treasurer of the State of Illinois; The First National Bank of Springfield, Illinois, impleaded with John Morris, as county treasurer of Wayne County, Illinois; Joseph D. Shaeffer, as county clerk of Wayne County, Illinois; George W. Book, as collector of Big Mound Township, Wayne County, Illinois; and the unknown owners and holders of the bonds and coupons claimed to be issued by Big Mound Township, dated April 1st, 1870 signed by M. H. Harris and J. B. Borah, claiming to be supervisors, and countersigned by William Book, claiming to be deputy town clerk of Big Mound Township, and payable to the Illinois South Eastern Railway Company, due April 1st, 1890, or sooner if so elected, if they shall be found in your county, personally to be and appear before the circuit court of said Wayne County, on the first day of the
30 next term thereof, to be holden at the court-house, in Fairfield, in said Wayne County, on the third Monday of October, 1879, to answer unto Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard, in their certain bill of complaint to cancel bonds of Big Mound Township, filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness R. E. Mabry, clerk of our said court, and the seal thereof, at Fairfield, this 28th day of August, A. D. 1879.

[SEAL.] R. E. MABRY, *Clerk.*

(Endorsement and return on summons:) Chancery summons. Wayne County circuit court. In the matter of E. Bonham et al. vs. J. B. Needles et al. Summons returnable to October term, 1879.

Sheriff's return.

STATE OF ILLINOIS,
Sangamon County, ss:

31 I duly served the within summons on the 29th day of Aug., 1879, by delivering a copy of the same to Frank W. Tracy, president of the First National Bank of Springfield, Ills.

S. M. SHOUP, *Sheriff.*

Filed Oct. 20, 1879.

R. E. MABRY, *Clerk.*

I have duly served the within summons on the 29th day of August, 1879, on Frank W. Tracy, president of the First National Bank of Springfield, Illinois, by delivering to him a true copy thereof. I also served the same on Thomas B. Needles, auditor of the State of Illinois, and James C. Smith, treasurer of the State of Illinois, by reading and at the same time delivering to each a true copy thereof, this 4th day of September, 1879.

S. M. SHOUP, *Sheriff.*

Sheriff's fees, $2.35, paid by James McCartney, att'y.

Your orators would therefore pray that Thomas B. Needles, as auditor of the State of Illinois; John C. Smith, as treasurer of the State of Illinois; John Morris, as county treasurer of Wayne County, Illinois; Joseph D. Shaeffer, as county clerk of Wayne County, Illinois; and George W. Book, as collector of Big Mound Township; the First National Bank of Springfield, Illinois, and the unknown owners and holders of the bonds and coupons claimed to be issued by Big Mound Township, dated April 1st, 1870, signed by M. H. Harris and J. B. Borah,
26 claiming to be supervisors, and countersigned by Wm. Boak, claiming to be deputy clerk of Big Mound Township, and payable to the Illinois Southeastern Railway Company, or bearer, due April 1st, 1890, or sooner, if so elected, &c., be made parties defendant to this bill of complaint by the names, titles, and designations as aforesaid; that they be each required to make true answers to the allegations of the foregoing bill of complaint, but not under oath, the oath thereto being hereby waived, and that upon a final hearing of this cause that your honors will order, adjudge, and decree that the said bonds and coupons purporting to be issued by Big Mound Township be declared to be null, void, and of no effect against said Big Mound Township, or the taxable property therein; that said bonds and coupons be ordered by the court to be brought into court and filed with the clerk thereof, and by him canceled and destroyed, and the said auditor of State and county clerk of Wayne County, Illinois, be perpetually enjoined from computing
27 or extending any tax, or ordering or causing the same to be computed or extended, against any of the taxable property of Big Mound Township; that the treasurer of the State of Illinois, the treasurer of Wayne County, Illinois, and the collector of Big Mound Township be each perpetually enjoined from collecting, or offering to collect, or from paying over to any one holding or claiming to hold any of the bonds or coupons above described purporting to be issued by said Big Mound Township to the Illinois Southeastern Railway Company, dated April 1st, 1870, signed by M. H. Harris, J. B. Borah, supervisors, and countersigned by William Book, deputy town clerk, or town clerk, and ordering that if any money is then in their hands collected from the taxable property of said township for the purpose of paying any part or all of the said bonds and coupons, that the same be returned and paid over to the supervisor of said township, to be held and used by him as other revenues of said township; that your orators, being
28 owners of real estate and tax payers in said township, and the other owners of real estate and tax payers therein being very numerous, your orators ask that they may be permitted to prosecute this action for their own benefit, and that of all other tax payers of said township, and that the benefits and advantages that may accrue therefrom may be for the benefit and advantage of all other tax-payers of said Big Mound Township, and that your honors will grant such other and further relief in the premises as to equity and good conscience may belong, your orators will ever pray, &c.

EDWARD BONHAM,
EDWIN BEECHER,
JAMES McCARTNEY,
ADAM RINARD,
Petitioners.

EDWIN BEECHER and
JAMES McCARTNEY,
Solicitors.

Chancery summons.

STATE OF ILLINOIS,
Wayne County, ss:

29 The people of the State of Illinois to the sheriff of Sangamon County, greeting:

We command you that you summons Thomas B. Needles, as auditor of the State of Illinois; John C. Smith, as treasurer of the State of Illinois; The First National Bank of Springfield, Illinois, impleaded with John Morris, as county treasurer of Wayne County, Illinois; Joseph D. Shaeffer, as county clerk of Wayne County, Illinois; George W. Book, as collector of Big Mound Township, Wayne County, Illinois; and the unknown owners and holders of the bonds and coupons claimed to be issued by Big Mound Township, dated April 1st, 1870 signed by M. H. Harris and J. B. Borah, claiming to be supervisors, and countersigned by William Book, claiming to be deputy town clerk of Big Mound Township, and payable to the Illinois South Eastern Railway Company, due April 1st, 1890, or sooner if so elected, if they shall be found in your county, personally to be and appear before the circuit court of said Wayne County, on the first day of the
30 next term thereof, to be holden at the court-house, in Fairfield, in said Wayne County, on the third Monday of October, 1879, to answer unto Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard, in their certain bill of complaint to cancel bonds of Big Mound Township, filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness R. E. Mabry, clerk of our said court, and the seal thereof, at Fairfield, this 28th day of August, A. D. 1879.

[SEAL.] R. E. MABRY, *Clerk.*

(Endorsement and return on summons:) Chancery summons. Wayne County circuit court. In the matter of E. Bonham et al. vs. J. B. Needles et al. Summons returnable to October term, 1879.

Sheriff's return.

STATE OF ILLINOIS,
Sangamon County, ss:

31 I duly served the within summons on the 29th day of Aug., 1879, by delivering a copy of the same to Frank W. Tracy, president of the First National Bank of Springfield, Ills.

S. M. SHOUP, *Sheriff.*

Filed Oct. 20, 1879.

R. E. MABRY, *Clerk.*

I have duly served the within summons on the 29th day of August, 1879, on Frank W. Tracy, president of the First National Bank of Springfield, Illinois, by delivering to him a true copy thereof. I also served the same on Thomas B. Needles, auditor of the State of Illinois, and James C. Smith, treasurer of the State of Illinois, by reading and at the same time delivering to each a true copy thereof, this 4th day of September, 1879.

S. M. SHOUP, *Sheriff.*

Sheriff's fees, $2.35, paid by James McCartney, att'y.

Chancery summons.

STATE OF ILLINOIS,
Wayne County, ss:

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon Thomas B. Needles, as
32 auditor of the State of Illinois; John C. Smith, as treasurer of the State of Illinois; John Morris, as county treasurer of Wayne County, State of Illinois; Joseph D. Shaeffer, as county clerk of Wayne County, Illinois; George W. Book, as collector of Big Mound Township, Wayne County, Illinois; The First National Bank of Springfield, Illinois; and the unknown owners and holders of the bonds and coupons claimed to be issued by Big Mound Township, dated April 1st, 1870, signed by M. H. Harris and J. B. Borah, claiming to be supervisors, & countersigned by William Book, claiming to be deputy town clerk of Big Mound Township, and payable to the Illinois South Eastern Railway Company, due April first, 1890, or sooner if so elected, if they shall be found in your county, personally to be and appear before the circuit court of said Wayne County, on the first day of the next term thereof, to be holden at the court-house in Fairfield, in said Wayne County, on the third Monday of October, 1879, to answer unto Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard, in their certain bill of complaint to cancel bonds of Big Mound Township, &c.,
33 filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness R. E. Mabry, clerk of our said court, and the seal thereof, at Fairfield, this 28th day of August, A. D. 1879.

[SEAL.] R. E. MABRY, *Clerk.*

(Endorsement and return of summons:) Chancery summons. Wayne Ccunty circuit court. In the matter of E. Bonham et al. vs. J. B. Needles et al. Summons returnable to Oct. term, 1879. Filed Oct. 9, 1879. R. E. Mabry, clerk.

STATE OF ILLINOIS,
Wayne County:

I hereby acknowledge service of the within writ this Oct. 4, 1879.

JOSEPH D. SHAEFFER,
County Clerk, Wayne County, Ills.
JOHN MORRIS, *Co. Treas.*
GEORGE W. BOOK,
Collector of Big Mound Township.

Notice by publication.

Proof of publication.

STATE OF ILLINOIS.
Wayne County, ss:

Wayne County circuit court, October term. A. D. 1879.

34 EDWARD BONHAM, EDWIN BEECHER, Adam Rinard, and James McCartney,
vs.
THOMAS B. NEEDLES, AS AUDITOR OF THE State of Illinois; John C. Smith, as treasurer of the State of Illinois; Joseph D. Shaeffer, as county clerk of Wayne County, Illinois; John Morris, as county treasurer of Wayne County, Illinois; George W. Book, as collector of Big Mound Township, Wayne County, Illinois; the First National Bank of Springfield, Illinois, and the unknown owners and holders of the bonds and coupons claimed to be issued by Big Mound Township, dated April 1st, 1870, signed by M. H Harris and J. B. Borah, claiming to be supervisors, and countersigned by William Book, claiming to deputy town clerk of Big Mound Township, and payable to the Illinois Southeastern Railway Company or bearer, due April 1st, 1890, or sooner if so elected, &c.

Bill to cancel bonds of Big Mound Township.

Affidavit having been filed in the office of the clerk of the circuit court of Wayne County, Illinois, that the holders and owners of the bonds and coupons claimed to be issued by Big Mound Town-
35 ship, Wayne County, Illinois, to the Illinois Southeastern Railway Company, dated April 1st, 1870, signed by M. H. Harris and J. B. Borah, claiming to be supervisors, and countersigned by William Book, claiming to be deputy town clerk or town clerk of Big Mound Township, and due April 1st, 1890, are unknown, except as above set forth, to the complainants in this suit, and that their place of residence and names of any and all of them are also unknown to said complainants, except as above stated: Now, therefore, public notice is hereby given to you, the said unknown owners and holders of any of said bonds or coupons above described, that a bill to cancel said bonds and coupons and for an injunction, &c., has been filed against you and others in the circuit court of Wayne County, Illinois, on the chancery side thereof, by the said complainants, which suit is now pending and undetermined in said court; that the names of the parties thereto are as above set forth, and that a summons therein has issued against
36 all of said defendants above set forth, returnable at the courthouse in the town of Fairfield, Wayne County, Illinois, on Monday, October 20th, 1879, being the third Monday of said month of October, A. D. 1879, as is by law required.

ROBERT E. MABRY,
Clerk Wayne Circuit Court.

EDWIN BEECHER and JAMES MCCARTNEY,
Comp'ts' Sol's.

Certificate of publication.

FAIRFIELD, ILL., *Oct.* 21, 1879.

This is to certify that the annexed advertisement has been inserted in the Wayne County Press, a weekly newspaper published in Fairfield, Wayne County, Illinois, four consecutive weeks, commencing in vol. 14, No. 36, Sept. 4, 1879, and ending in vol. 14, No. 39, Sept. 25, 1879.

D. W. BARKLEY,
Publisher.

Pub's fee, $12.00.

Affidavit as to non-resident owners.

Affidavit as to non-resident owners.

STATE OF ILLINOIS,
Wayne County, ss:

Wayne circuit court, October term, A. D. 1879.

EDWARD BONHAM EDWIN BEECHER, ADAM Rinard, and James McCartney,
vs.
THOMAS B. NEEDLES, AS AUDITOR OF THE State of Illinois; John C. Smith, as
37 treasurer of the State of Illinois; Joseph D. Shaeffer, as county clerk of Wayne County, Illinois; John Marris, as treasurer of Wayne County, Illinois; George W. Book, as collector of Big Mound Township, Wayne County, Illinois; the First National Bank of Springfield, Illinois, and the unknown owners and holders of the bonds and coupons claimed to be issued by Big Mound Township, dated April 1st, 1870, signed by M. H. Harris and J. B. Borah, claiming to be supervisors, and countersigned by William Book, claiming to be deputy town clerk of Big Mound Township, and payable to the Illinois Southeastern Railway Company, or bearer, due April 1st, 1890, or sooner if so elected, &c.

Bill to cancel bonds of Big Mound Township.

James McCartney, being by me first duly sworn, on his oath says that he made and caused to be made diligent inquiry as to the names and places of residence of the owners or holders of the bonds and coupons claimed to be issued by Big Mound Township, Wayne County,
38 Illinois, to the Illinois Southeastern Railway Company, dated April 1st, 1870, and due April 1st, 1890, signed by M. H. Harris and J. B. Borah, claiming to be supervisors and countersigned by William Book, claiming to be deputy town clerk or town clerk of Big Mound Township, and that he has been unable to learn either the names or the places of residence of any of the holders or owners of any of said bonds or coupons except what is owned or held by the First National Bank of Springfield, Illinois; that he does not know the names or places of residence of any of said holders or owners other than as above stated, and that he is informed and believes that the names or places of residence of any of said holders or owners or any or either of them is entirely unknown to any of the complainants in this cause, except as above set forth;

that said owners or holders are interested in the subject-matter of this suit, and that said complainants are desirous that each and all of said holders or owners should be made parties to this suit and process
39 therein served upon them as the law directs; and he asks that service may be had upon them and process and notice issued to them as unknown parties, &c.

JAMES McCARTNEY.

Sworn to and subscribed before me this 30th day of July, A. D. 1879.

R. E. MABRY,
Clerk Circuit Court.

(Endorsements:) Wayne circuit court, October term, A. D. 1879. Edward Bonham et al. vs. Thomas B. Needles et al. Aff. of unknown owners, &c. Filed Aug. 28, 1879. R. E. Mabry, clerk.

Petition and bond for removal of cause to U. S. district court.

Petition.

Petition for removal on the ground of citizenship under the act of March 3, 1875, where the adversary parties are all citizens of different States and all the plaintiffs or all the defendants write in the petition for removal.

In the circuit court of Wayne County, State of Illinois.

EDWARD BONHAM ET AL., PLAINTIFFS,
vs.
THOMAS B. NEEDLES ET AL., DEFEND'TS.

Petition for removal to the circuit court of the United States, southern district of Illinois.

40 To the honorable the circuit court of Wayne County, State of Illinois:

Your petitioners respectfully show to this honorable court that the matter and amount in dispute in the above entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars; that the controversy in said suit is between citizens of different States, and that the petitioner, at the time of the commencement of this suit, and still is, a citizen of the State of Massachusetts, and that Edward Bonham, Big Mound Township Corporation, Thos. B. Needles, and all parties named in the above suit in chancery were then, and still are, citizens of the State of Illinois; and that this petitioner is the owner of Big Mound Township bonds Nos. 1, 2, 3, 4, and 5, for $1,000 each, aggregating $5,000, besides interest, purchased for a valuable consideration.

And your petitioner offers herewith a good and sufficient surety for his entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit and for paying
41 all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto. And he prays this honorable court to proceed no further herein, except to make the order of removal required by law and to accept the said surety and bond and to cause the record herein to be removed into said circuit court of the United States in and for the southern district of Illinois, and he will ever pray.

JOHN A. KERNOCHAN,
Petitioner.

STATE OF MASSACHUSETTS,
County of Berkshire, ss:

I, John A. Kernochan, being duly sworn, do say that I am the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true as I verily believe.

Subscribed by the said John A. Kernochan in my presence *by* and by him sworn to before me this 14th day of Oct., A. D. 1879.

JOHN F. VAN DEUSEN,
Notary Public.

[SEAL.]

42 COMMONWEALTH OF MASSACHUSETTS,
Berkshire, ss:

I, Henry W. Taft, clerk of the superior court of said county of Berkshire, the same being a court of record, do hereby certify that John F. Van Deusen, esquire, whose name is subscribed to the certificate or proof of acknowledgement of the annexed instrument, and therein written, was at the time of taking such proof or acknowledgement a notary public within and for said county of Berkshire, duly authorized to take the same, and that I am well acquainted with the handwriting of said notary and verily believe that the signature to said certificate of proof and acknowledgement is genuine; and I certify that the said instrument is executed and acknowledged according to the laws of this State.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at Pittsfield, this fourteenth day of October, A. D. 1879.

HENRY W. TAFT, *Clerk.*

[SEAL.]

43 *Bond of petitioner on removal of cause.*

Know all men by these presents, that I, John A. Kernochan, of Pittsfield, Mass., as principal, and Frank W. Tracy, of Springfield, county of Sangamon, and State of Illinois, as sureties, are held and firmly bound unto Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard in the penal sum of five hundred dollars, for the payment whereof, well and truly to be made unto the said Edward Bonham, Edwin Beecher, Jas. McCartney, and Adam Rinard, their heirs, representatives, and assigns, jointly and severally, firmly by these presents.

Yet upon these conditions: The said John A. Kernochan having petitioned the circuit court of Wayne County, State of Illinois, for the removal of a certain cause therein pending, wherein Edward Bonham et al. are plaintiffs and Thomas B. Needles et al. are defendants, to the circuit court of the United States in and for the district of southern Illinois:

44 Now, if the said John A. Kernochan, your petitioner, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise in full force and virtue.

Witness our hands and seals this 14th day of Oct., A. D. 1879.

JOHN A. KERNOCHAN. [SEAL.]
FRANK W. TRACY. [SEAL.]

In presence of—
JOHN F. VAN DEUSEN, to J. A. K.
GEO. H. HALME.

STATE OF ILLINOIS,
County of Sangamon, ss:

I, Frank W. Tracy, of said county, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Illinois and a property holder therein; that I am worth the sum of five hundred dollars over and above all my debts and liabilities, and exclusive of property by law exempt from execution; that I
45 have property in the State of Illinois liable to execution of the value of more than five hundred dollars.

FRANK W. TRACY.

Subscribed in my presence by Frank W. Tracy, and by him sworn to before me, this 18th day of October, A. D. 1879.

[SEAL.] JAS. F. McNEILL,
Notary Public.

(Endorsement:) Bond for removal of cause under act of 1875. In the circuit court of Wayne County, Ills., Oct. term, 1879. Edward Bonham et al., plaintiffs, vs. Thomas B. Needles et al., defendants. Bond for the removal of said cause to the circuit court of the United States for the southern district of Illinois under act of March 3, 1875. George A. Sanders, att'y for petitioner. Filed Oct. 21, 1879. R. E. Mabry, clerk.

Plaintiff's fee bill.

In the circuit court, October term, A. D. 1879.

STATE OF ILLINOIS,
Wayne County:

45 IN THE MATTER OF EDWARD BONHAM ET AL.
vs.
THOMAS B. NEEDLES ET AL.

Bill to cancel bonds of Big Mound. October term, A. D. 1879.

Plaintiffs' costs.	Fee for each item.	Amount.
Docketing suit each time	.20	.60
Filing papers in suit	.05	.20
Appearance of party or attorney	.15	.15
Issuing and filing summons	.40	.80
Iss'g notice for pub., per 100 words	.15	1.50
Ent. and fil'g proof pub	.25	.75
Motions not enumerated	.20	.20
Orders not enumerated	.20	.20
Indexing suit in court	.15	.15
Satisfaction of fee-bill	.05	.05
Making and entering fee-bill	.30	.30
Copy bill of costs, cert., & seal	.55	.55
Printer's fees		10.00
Making transcript, paid by def'd'ts		16.00
Total fees		$31.45

I hereby certify that the foregoing is a true copy of plaintiffs' costs herein. Given under my hand and seal of said court.

[SEAL.] R. E. MOBRY, *Clerk.*

47 (Endorsed:) Transcript of proceedings. In suit. Circuit court, Wayne County, October term, 1879. In the matter of B. Bonham

et al. vs. Thomas B. Needles et al. Bill to cancel bonds of Big Mound Township. Filed December 1, A. D. 1879. J. A. Jones, clerk.

And afterwards, to wit, on the 26th day of March, A. D. 1880, the answer of John A. Kernochan, on' of the defendants, to said plaintiffs' bill of complaint was filed in said cause, which answer is in the following words, to wit:

Answer of Kernochan.

Circuit court of the United States for the southern district of Illinois.
In chancery.

EDWARD BONHAM ET AL.
vs.
THOMAS B. NEEDLES ET AL.

The answer of John A. Kernochan, one of the defendants, to the bill of complaint of Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard, complainants.

This defendant, reserving to himself all rights of exceptions
48 to the said bill of complaint, for answer thereto says, that he is the holder and owner of the five one thousand dollar bonds mentioned and described in said bill as bonds claimed to be issued by Big Mound Township, in the county of Wayne, State of Illinois, and that he became the holder and owner of said bonds by purchase in good faith for a valuable consideration long before the filing of the said bill of complaint, and that at the time he purchased said bonds he had no notice or knowledge of any irregularity or illegality, if any there was, in the making and issuing of the said bonds, but, on the contrary, was informed and believed, and still believes, that said bonds were duly issued by said township in strict conformity to the provisions and requirements of the statutes and laws of the State of Illinois; and this defendant here shows to the court a copy of one of said bonds, the others being of like tenor and effect save as to numbers of the bonds marked Exhibit A of this answer, and asks that the same may be taken as a part thereof.

49 And this defendant, further answering, says that it is recited in and by each of said bonds, as follows, to wit: "This bond is one of a series of bonds issued by said township to aid in the construction of the Illinois Southeastern Railway in pursuance of an authority conferred by an act of the general assembly of the State of Illinois, entitled 'An act to incorporate the Illinois Southeastern Railway Company,' approved Feb'y 25th, 1867 and an act amendatory thereof, approved Feb'y 24th, 1869, and an election of the legal voters of the aforesaid township held on the 10th day of November, 1868, under the provisions of said act."

And this defendant, further answering, says that said township of Big Mound paid all the interest accruing due on said bonds up to and before the said bill of complaint was filed and exhibited against the defendants named therein, and this defendant as the unknown holder and owner of said bonds.

And this defendant, further answering, says he believes it to be
50 true, as stated in and by said bill, that the legislature of the State of Illinois did on or about the 25th day of Feb'y, A. D. 1867, pass an act entitled "An act to incorporate the Illinois Southeastern

Railway Company," and that the governor of the said State duly approved the same. That the said act thereupon became and was in full force and effect. That under and by virtue of said legislative enactment certain persons therein named became a body corporate under the name and style of the Illinois Southeastern Railway Company, with power to build and construct a railway as set forth in said bill; and this defendant believes that some provisions of said legislative enactment are properly set forth in and by said bill, but that many of the provisions of said legislative enactment are not mentioned or set forth in and by said bill, and therefore this defendant asks that the said enactment as found on pages 750, 751, 752, 753, 754, and 755 of
51 volume 2 of the private laws of the State of Illinois for 1867 be taken and considered as part of this defendant's answer.

And this defendant, further answering, says he believes it to be true as set forth in and by said bill, that in the year 1869 the legislature of the State of Illinois passed an act, which was duly approved by the governor on the 25th day of Feb'y, 1869, entitled "An act to amend an act to incorporate the Illinois Southeastern Railway Company," which amendatory act as found on pages 308, 309, 310, 311, 312, 313, 314, and 315 of volume three (3) of the private laws of the State of Illinois for 1869 this defendant asks to be taken as a part of this answer.

And this defendant, further answering, says that he denies all and every allegation in said bill contained whereby it is averred or charged that said bonds were not issued and made in strict pursuance of the provisions of said legislative enactments.

52 And this defendant, further answering, says that he is not advised of the passage of an act by the legislature of the State of Illinois, on the 28th day of February, 1867, having for its title "An act to change the time of electing certain officers in a county herein named," save in and by the bill of complaint in this cause; and that defendant has no information of the contents of an act entitled as aforesaid, save in and by the said bill of complaint herein, and therefore this defendant neither admits nor denies the allegation in said bill contained respecting such alleged act and the provisions thereof, but calls upon complainants for proof of the same.

And this defendant, further answering, says that he is informed and believes, and so alleges the fact to be, that said town of Big Mound was in fact a properly organized township, having the proper officers under the laws and statutes of the State of Illinois at the time of making and issuing of the said bonds, and had been such township for a long
53 time previous thereto; and that the said county of Wayne was at said time duly conducting and transacting its affairs and business as a county properly organized under the township organization laws of the State of Illinois.

And this defendant, further answering, says that it is true, as alleged in and by said bill of complaint, that said bonds have coupons attached for the payment of the interest thereon at the rate of ten per cent. per annum, each of said coupons being for the promising to pay the bearer thereof the sum of fifty dollars, the amount of interest accruing, due upon each of said bonds, semi-annually, on the first days of April and October of each year; and that the said bonds are properly registered in the office of the auditor of the State of Illinois, under and in pursuance of the statute of said State; and the said auditor in discharging his duties as enjoined by said statute in directing and requiring the proper officers of said township of Big Mound and the county of

54 Wayne to levy and collect upon and from the taxable property of said township of Big Mound a tax to pay and satisfy the interest accruing upon said bonds as aforesaid.

And the defendant, further answering, says that in and by the amendatory enactment of the legislature of the State of Illinois, aforesaid, it was, among other things, provided that said corporation could have power to unite and consolidate its railroad with any other upon terms to be agreed upon between the said corporation and any company with which such consolidation might be effected; and that in pursuance of such authority and power so given by said amendatory enactment, the said Illinois Southeastern Railway Company did become consolidated with a certain other railway company whose line of railroad connected with the railroad of said Illinois Southeastern Railway Company, which said consolidated company was known by the name and style of the Springfield and Illinois Southeastern Railway Company, and that the railroad for the building and construction of which said legisla-

55 tive enactments were made was properly built and constructed, and duly put into operation within the time and in the manner contemplated and provided for in and by said enactments.

And this defendant, further answering, says that the aforesaid bonds were entitled to registration in the office of the auditor of public accounts of the State of Illinois, as shown in and by the statement under oath of M. H. Harris, supervisor of Big Mound Township aforesaid, a copy of which statement in writing is hereto filed and attached and marked Exhibit B of this answer, and defendant asks that the same be taken and regarded as a part of this his answer.

And this defendant, further answering, says that he denies that complainants are entitled to the relief or any part thereof in said bill demanded, and defendant here denies all and every allegation in said bill contained and not herein mentioned or replied unto, and this

56 defendant prays the same advantage of his aforesaid answer as if he had demurred to the said bill of complaint, and to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN A. KERNOCHAN.

By GEO A. SANDERS and N. M. BROADWELL, his solicitors.

EXHIBIT B.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, December 26, 1879.

I, Thomas B. Needles, auditor of public accounts of the State of Illinois, do hereby certify that the annexed instrument is a true, full, and correct copy of the certificate of M. H. Harris, supervisor of Big Mound T'p, Wayne Co., Illinois, for the registration of bonds of said tp. issued in aid of the Illinois Southeastern R. R. Co., dated April 1st, 1870, amounting to $5,000.00, now on file in and forming a part of the records of this office.

57 In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[SEAL]

T. B. NEEDLES,
Auditor Public Accounts.

Certificate of M. H. Harris, supervisor.

STATE OF ILLINOIS,
County of Wayne:

BIG MOUND TOWNSHIP, *July 16th*, 1870.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois:

SIR: I herewith transmit to you for registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being five in number, dated April 1st, 1870, amounting to $5,000 (five thousand dollars), payable on the first day of April, 1890, and bearing interest at the rate of ten per centum per annum, payable semi-annually. These bonds are issued by the township of Big Mound, in the county of Wayne and State of Illinois, to the Illinois Southeastern Railroad Company,
58 under and by authority of the provisions of an act to incorporate the Illinois Southeastern Railway Company, approved February 25th, 1867, and a vote of the people of said town at an election held therein on the 10th of November, 1868; and I, as supervisor of said township, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and to entitle them to the benefits of the said act last referred to, have been fully complied with, to the best of my knowledge and belief.

M. H. HARRIS,
Supervisor Big Mound Tp., Wayne Co.

Subscribed and sworn to by the said M. H. Harris, before me, this sixteenth day of July, A. D. 1870.

[SEAL.]

W. J. SAILOR,
N. P., Wayne Co., Ills.

(Endorsed:) State of Illinois, auditor's office. Certificate of M. H. Harris, supervisor of Big Mound T'p, Wayne Co., Illinois. Registration of bonds issued in aid of the Illinois Southeastern Railroad by
59 Big Mound Township, Wayne Co., Illinois. Filed July 19, 1870. C. E. Lippincott, auditor public accounts.

EXHIBIT A.

Copy of bond No. 1.

Registered by auditor of public accounts. Principal and interest collected and paid by the treasurer of State of Illinois.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS.

No. 1.] (Big Mound.) [$1,000.

TOWNSHIP RAILROAD BOND.

Ten per cent. interest.

Know all men by these presents that the township of Big Mound, in the county of Wayne, and State of Illinois, acknowledges itself to owe

and be indebted to the Illinois Southeastern Railway Company or bearer in the sum of one thousand dollars, which sum the said township promises to pay, at the office of the treasurer of the county aforesaid, on the first day of April, A. D. 1890; the said township reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of ten per centum per annum, payable semi-annually on the first days of April and October of each year, on the presentation and surrender of the annexed coupons. This bond is one of a series of bonds issued by said township to aid in the construction of the Illinois Southeastern Railway, in pursuance of the authority conferred by an act of the general assembly of the State of Illinois, entitled "An act to incorporate the Illinois Southeastern Railway Company," approved Feb'y 25th, 1867, and "An act amendatory thereof, approved Feb'y 24th, 1869," and an election of the legal voters of the aforesaid township held on the 10th day of November, 1868, under the provisions of said act.

60 In witness whereof the said township of Big Mound has caused these presents to be signed by its supervisor, and countersigned by its clerk, this first day of April, 1870.

M. H. HARRIS & J. B. BORAH,
Supervisor.

WILLIAM BOOK, *Clerk.*

(Across the face:) $1,000.

BIG MOUND TOWNSHIP, WAYNE COUNTY, ILLINOIS.

Bond.

61 $1,000. 10 per cent. Principal payable April 1, 1890. Interest payable April 1st and October 1st.

The Springfield and Illinois Southeastern Railway Company, of the State of Illinois, hereby guarantees the payment of the principal and interest of this bond at the American Exchange National Bank, in the city of New York, by virtue of a resolution of said company, passed on the 13th day of April, A. D. 1870.

As witness the corporate signature and seal of said company, hereto affixed by Thomas S. Ridgway, its president, this 21st day of April, A. D. 1870.

{SPRINGFIELD & ILLS. S. E. RAILWAY CO. L. S.} THE SPRINGFIELD AND ILLINOIS SOUTHEASTERN RAILWAY COMPANY,

By THOS. S. RIDGWAY, *President.*

AUDITOR'S OFFICE, ILLINOIS,
Springfield, July 19, 1870

62 I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provision of an act entitled "An act to fund and provide for paying the railroad debt of counties, townships, cities, and towns," in force April 16th, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P.

Coupon from bond No. 1.

(Copy of coupon No. 20 from bond No. 1.)

Township of Big Mound, county of Wayne, State of Illinois, will pay to the bearer fifty dollars, at the office of the treasurer of Wayne County, Illinois, the first day of April, 1880, being six months' interest on railroad bond No. 1.

M. H. HARRIS.
J. B. BORAH,
Supervisor.

(On each margin and across the face:) $50.

This coupon is a copy of No. 20 for bond No. 1, and is a fac-simile of twenty others save as to serial numbers, from 21 to 40, and as to dates of payment.

63 (Endorsed:) Filed March 26, 1880. J. A. Jones, clerk.

And, afterwards, to wit, on the 9th day of July, A. D. 1880, the following stipulation was filed in said cause, entered into between the complainants and John A. Kernochan, of the defendants herein, which stipulation is as follows, to wit:

Stipulation.

UNITED STATES OF AMERICA:

Southern district of Illinois. June term. A. D. 1880. In chancery.

E. BONHAM ET AL.
vs.
THOMAS B. NEEDLES ET AL.

It is agreed and stipulated by and between the complainants and John A. Kernochan, one of the defendants, that this cause shall be heard on the bill of complaint, the answer of said Kernochan and the replication to said answer, and that in addition to such facts as are made to appear by said pleadings the following shall be taken and received by the court on the hearing hereof the same as if shown by depositions regularly taken in this cause:

64 1st. That defendant, John A. Kernochan, is the holder and owner of the five bonds mentioned and described in said bill and answer, and that said Kernochan acquired the title to said bonds and became the owner thereof as set forth in his said answer, and that Exhibit A of answer is a true copy of bond.

2nd. That the township of Big Mound since the issue of said bonds and until the filing of the bill herein regularly, by an annual levy and collection of a tax for that purpose, paid the interest on said bonds as the same became due under the laws of Illinois, the order of levy for the same being made by the auditor of State.

3rd. That while said bonds bear date April 1st, 1870, they were not, in fact, delivered by the officers acting or assuming to act for said township until the first day of June, A. D. 1870, when they were delivered to the Springfield, Illinois, South Eastern Railway Co.

4th. That the Illinois South Eastern Railway Company, on the 3rd of

December, A. D. 1869, was, in pursance of the laws of the State of
65 Illinois, consolidated with the Pana, Springfield & North Western R. R. Co., and that the name of the company formed by such consolidation was and is the Springfield, Illinois, South Eastern Railway Company, and that by virtue of such consolidation, if the same was authorized by law, all the rights and property of said Illinois South Eastern Railway Company passed to and became the rights and property of said consolidated company.

5th. That the certificate of the auditor of the State of Illinois, Exhibit B of Kernochan's answer, with the indorsements thereon, shall be taken and regarded as true copies of such indorsements and said copies are to have the same force and effect as the originals.

6th. That prior to the act of Feb'y 28th, 1867, the said county was regularly organized under the general township organization laws of Illinois, and that the township of Big Mound was one of the townships duly established under said prior organization.

7th. That complainants are citizens of the State of Illinois, resi-
66 dents of Wayne County, and tax-payers of said Big Mound Township, and that defendant Kernochan is a citizen of the State of Massachusetts, and has been a citizen of said State of Massachusetts for the last ten years.

7th. That the paper hereto attached and marked Records shall be taken and regarded, so far as the same appear therein, and as therein set forth, as the minutes, files, and records of said Wayne County and said Big Mound Township.

8th. That no vote of said town of Big Mound in regard to the issue of said bonds was had after the said consolidation.

GEO. A. SANDERS AND
N. M. BROADWELL,
For JOHN A. KERNOCHAN.

E. BEECHER,
JAMES MCCARTNEY,
Sol's for Compl'ts:

RECORDS.

Proposition for donation.

Proposition for donation to Big Mound Town., Wayne Co., Ill.

The following proposition is hereby submitted to the legal voters
67 of the town of Big Mound, in the county of Wayne, and State of Illinois, by the board of directors of the South Eastern Railway Company, to be voted upon by the legal voters of said town on the 10th day of November, 1868:

First. That the town of Big Mound, in the county of Wayne, and State of Illinois, donate to the said Illinois Southeastern Railway Company the sum of five thousand dollars, one-third of the said five thousand dollars to be paid when the said railway company shall grade and tie a railroad from Fairfield to the south line of Wayne County, Illinois, said amount to be raised by a tax levied and collected as other county taxes, in the year 1869, and to be paid to the treasurer of said Illinois Southeastern Railway Company as soon as the same is collected by the treasurer of said county of Wayne, provided the same railroad is built as above provided for, when the same is collected; and if the said rail-

road is not graded and tied as above provided for when the said tax is collected, then the said county treasurer shall retain the same in
68 his hands for the term of two years from the first day of April, 1869; and if the said railroad is not then graded and tied as above provided for, then the said amount shall be returned to the township to be disposed of as the said town authorities may direct. One-third of said sum of five thousand dollars shall be raised by said town in the year 1870, by the same means above provided for the first one-third, and shall be disposed of in the same way; and in the year 1871 the balance of said sum shall be raised in the same way and paid over the said treasurer of said railway company, provided that when the same is collected the said railroad is fully completed and the cars running upon the same through the whole extent, as above provided for; and if not at that time so completed and running, the whole amount in the hands of said county treasurer belonging to the said fund shall be returned to the proper authorities of said town, to be disposed of as above provided.

69 Second. It is hereby agreed and understood that if the requisite legislation can be procured at the meeting of the legislature of this State, authorizing the township of Big Mound aforesaid to issue township bonds payable in not less than five nor more than twenty years, bearing interest at the rate of ten per cent. per annum, then and in that case the said Illinois Southeastern Railway Company shall take and receive the said amount of five thousand dollars in the bonds of said township, in lieu of the amount to be raised by tax, as provided for in the first clause of this proposition; and then and in that case the said tax shall not be levied, but the said amount shall be delivered to the treasurer of the said Illinois Southeastern Railway Company in such township bonds, when the cars are running upon the said railroad and the same is fully completed through the said entire line of said road from Fairfield to the south line of the county, and the said treasurer of the said railway company shall be compelled to receive the said bonds in lieu of said tax.

70 THOS. S. RIDGWAY,
Pres. Board Directors Ill. S. E. R. Co.
C. C. BOGGS,
Sec'y Board Directors of Ill. S. E. R. Co.

Vote on donation.

STATE OF ILLINOIS,
County of Wayne:

I, William Book, senior, clerk of the said town *town* of Big Mound, in the county and State aforesaid, do certify that at an election held in said town of Big Mound on Tuesday, the 10th of November, A. D. 1868, pursuant to notice given twenty days prior thereto, by posting up ten notices thereof, together with ten printed copies of the proposition of the Ill's S. E. R. W. Co. to said town, asking for a donation of $5,000, for the adoption or rejection of which the said election was called, the votes cast at said election were as follows, to wit:

Total number of votes cast	83
One double vote rejected	1
Total	82

Total for donation..... 47
" against " 35
Majority for donation..... 12

Copy of proposition for donation herewith filed.
71 Witness Wm. Books, s'n'r, clerk of Big Mound Town, this 11th day of November, A. D. 1868.

WILLIAM BOOK, SENIOR,
Clerk of Big Mound Town, Ill's.

Certificate of county clerk.

STATE OF ILLINOIS,
Wayne County, ss:

I, Joseph D. Shaeffer, clerk of the county court in and for said county and State, do hereby certify that the foregoing are true and correct copies of the proposition (printed) and of the certificate of the town clerk as now appears *now* on file in my office, which was filed in my office on the 11th day of November, 1868.

In testimony whereof I have hereunto set my hand and official seal at my office this 30th day of January, A. D. 1880.

{ SEAL WAYNE COUNTY COURT, ILLINOIS. }

JOS. D. SHEFFER,
County Clerk.

Officers elected.

I, William Book, sen., town clerk, do hereby certify that at an election held at Little Mound school house, in the town of Big Mound, in the county of Wayne, and State of Illinois, on Tuesday, the 6th
72 day of April, 1869, the following described officers, to wit, John N. Upton, town clerk; John Clark, assessor; Milton A. Taylor, collector; John R. Murphy, com. of highways. This April the 6th, 1869.

WM. BOOK, SEN.,
Town Clerk.

Certificate of county clerk.

STATE OF ILLINOIS,
Wayne County, ss:

I, Joseph D. Shaeffer, clerk of the county court, do hereby certify that the foregoing is a true copy of the original return on file in my office, which was filed in my office on the 8th day of April, A. D. 1869

In testimony whereof I have hereunto set my hand and official seal this 30th day of January, A. D. 1880.

{ SEAL WAYNE COUNTY COURT, ILLINOIS. }

J. D. SHAEFFER,
County Clerk.

Certificate of deputy clerk.

I, Wm. Book, deputy clerk of Big Mound Town, in the county of Wayne, and State of Illinois, do hereby certify that at an election held at the Yates school house on the 28th day of August, 1869, that the majority of the voters present voted in favor of giving bonds to the Southeastern Railway Company for their bonds.
73 This August 28th, 1869.

WM. BOOK.
Deputy Clerk.

Certificate of county clerk.

STATE OF ILLINOIS,
Wayne County, ss:

I, Joseph D. Shaeffer, clerk of the county court in and for said county, do hereby certify that the foregoing is a true and correct copy of the original certificate now on file in my office, which certificate was filed on the 2nd day of September, 1869.

In testimony whereof I have hereunto set my hand and official seal this 30th day of January, A. D. 1880.

[SEAL.] J. D. SHAEFFER,
County Clerk.

We hereby certify that at a special town election held at the school house in Jeffersonville, in the town of Lamard, county of Wayne, and State of Illinois, for the 10th day of Nov., A. D. 1868, for the purpose of voting for and against donating the sum of ten thousand dollars to Illinois Southeastern Railway Company there was one hundred and forty-five votes for donation and thirteen against donation.

L. G. MOORE,
Town Clerk.
J. S. HAWK,
Moderator.

74 STATE OF ILLINOIS,
Wayne County, ss:

I, Joseph D. Shaeffer, clerk of the county court in and for said county, do hereby certify that the foregoing is a true and correct copy of the original certificate now on file in my office, which was filed on the 13th day of November, 1868.

In testimony whereof I have hereunto set my hand and official seal at my office this 30th day of January, A. D. 1880.

{SEAL WAYNE COUNTY COURT, ILLINOIS.} J. D. SHAEFFER,
County Clerk.

75 *Abstract of votes for supervisors.*

	1st dist.			2nd district.									4 district.				
	D. Wingate.	John Keen, jr.	R. F. Farth.	M. H. Harris.	T. Buffington.	J. B. Borah.	D. W. Ulm.	Jeff. Sloan.	A. Rinard.	L. T. Moore.	J. C. Bestow.	Tom Smith.	Wm. McClure.	Wm. Book.	L. M. Clems.	William Mix.	W. H. Mix.
Four Mile	27	43															
Arrington	20	....	44														
Big Mound	....	....	....	73	34	38	1	1									
Lamard	....	....	....	13	9	52	33	....	5	3	3						
Barnhill	....	....	....	140	11	67	10	....	....	....	....	1	1				
Jasper	....	....	....	25	2	56	32	....	....	....	....	....	....	3			
Zif	....	....	....	....	....	....	....	....	....	....	....	....	....	....			
Bedford	....	....	....	....	....	....	....	....	....	....	....	....	....	....	19		
Indian Prairie	....	....	....	....	....	....	....	....	....	....	....	....	....	....	31	1	1
	47	43	44	251	180	213	76	1	5	3	3	1	1	3	50	1	1

We do hereby certify that the foregoing is a true and correct abstract

of votes cast at an election held in said county, on Saturday, the 18th May, 1867, for the respective persons therein named as supervisors.

W. L. BEESON, *J. P.*
NATHAN ATTERBURY, *J. P.*

Attest:

OLIVER HOLMES,
Clerk.

76 *Certificate of county cl'k as to truth of above abstract.*

STATE OF ILLINOIS,
Wayne County, ss:

I, Joseph D. Shaeffer, clerk of the county court in and for said county, do hereby certify that the foregoing is a true and correct transcript of abstract of votes for supervisors in said county as appears on file in my office.

In testimony whereof I have hereunto set my hand and official seal this 30th day of January, 1880.

[SEAL.] J. D. SHAEFFER,
County Clerk.

2nd abstract of votes.

Abstract of votes given in the county of Wayne, and State of Illinois, for supervisors of the second district, on Saturday, the 18th day of May, one thousand eight hundred and sixty-seven:

M. H. Harris had two hundred and fifty-one votes;
Titus Buffington had one hundred and eighty votes;
J. B. Borah had two hundred and thirteen votes;
D. N. Ulm had seventy-six votes;
Jefferson Sloan had one vote;
A. Rinard had five votes;
T. S. Moore had three votes;
J. C. Bestow had three votes; and
77 T. Smith had one vote;
Wm. McClure one vote;
Michael Book had three votes.

Poll-books opened and abstract made in our presence at the clerk's, office, in Fairfield, this 25th day of May, A. D. 1867.

W. L. BEESON, *J. P.*
NATHAN ATTERBURY, *J. P.*

Certificate as to correctness of 2nd abst'ct.

STATE OF ILLINOIS,
Wayne County, ss:

CLERK'S OFFICE, COUNTY COURT,
Fairfield, May 25, 1867.

I, Oliver Holmes, clerk of the county court, within the county and State aforesaid, do hereby certify that the foregoing is a correct statement of the votes cast for the above-named persons as supervisors of the second district at an election held in the different towns of said district on Saturday, the 18th day of May, A. D. 1867.

In testimony whereof I have hereunto set my hand and affixed the

seal of said court at Fairfield, in my office, this 25th day of May, A. D. 1867.

[SEAL.] OLIVER HOLMES,
Co. Clerk.

78 STATE OF ILLINOIS,
Wayne County, ss :

I, Joseph D. Shaeffer, clerk of the county court in and for said county, do hereby certify that the foregoing is a true and correct copy of certificate and abstract of votes for supervisors as appears on file in my office.

In testimony whereof I have hereunto set my hand and official seal this 30th day of January, 1880.

[SEAL.] J. D. SHAEFFER,
County Clerk.

Oath made by M. H. Harris.

STATE OF ILLINOIS,
Wayne County, ss :

I, Miles H. Harris, having been elected to the office of supervisor of the second district in the county of Wayne aforesaid, do solemnly swear that I will support the Constitution of the United States and of the State of Illinois, and that I will faithfully and impartially perform the duties of my said office according to law and best of my understanding; and I do also solemnly swear that I have not fought a duel nor sent or accepted a challenge to fight a duel, the probable issue of which
79 might have been the death of either party, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance since the adoption of the Constitution, and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel during my continuance in office, so help me God.

MILES H. HARRIS.

Subscribed and sworn to before me this 3rd day of June, 1867.

OLIVER HOLMES,
County Clerk.

STATE OF ILLINOIS,
Wayne County, ss :

I, Joseph D. Shaeffer, clerk of the county court in and for said county, do hereby certify that the foregoing is a true and correct copy of the oath of office of Miles H. Harris, supervisor, as appears on file in my office, which was filed in my office on the 3rd day of June, 1867.

In testimony whereof I have hereunto set my hand and official seal this 30th day of January, A. D. 1880.

[SEAL.] J. D. SHAEFFER,
County Clerk.

80 I, John N. Upton, do appoint Wm. Book, sr., deputy clerk, for the time being, in Big Mound Town, this July 22nd, 1869.

Certificate of deputy clerk.

I, Wm. Book, deputy clerk of Big Mound Town, in the county of

Wayne and State of Illinois, do hereby certify that at an election held at the Yates school house, on the 28th day of August, that the majority of the voters present voted in favor of giving bonds to the South Eastern Railway Company for their bonus.

This August 28th, 1869.

WM. BOOK,
Dep'ty Clerk.

Certificate of levy.

We, the undersigned, composing the board of town auditors, have this day levied two and a half mills to the dollar for interest on township bonds in Big Mound Town.

This September 11th, 1869.

A. J. ARMSTRONG,
Supervisor.
WM. BOOK, *Clerk.*

BIG MOUND TOWNSHIP,
Wayne County, Illinois:

I, Gibson B. Davis, town clerk in and for said town, do certify
81 that the above is a full and complete copy of the record in my office in any manner pertaining to the proceedings and vote for donation to the Springfield & Ills. S. E. Railway Co.

Given under my hand this 5th day of February, A. D. 1880.

J. B. DAVIS, *T. C.*

Clerk of Big Mound; report of his delivery of five bonds.

To the undersigned, as clerk of the town of Big Mound, in Wayne County, Illinois, would report that on the 1st day of June, A. D. 1870, he executed and delivered to the Springfield and Ills. S. R. Railway Co. five bonds of the denomination of one thousand dollars each, bearing date April 1st, 1870, and due April 1st, 1890, with interest at the rate of ten per cent. per annum, payable bi-annually at the office of the treasurer of Wayne County, Illinois, for which bonds he took the company's receipt, of which the following is a copy:

Received of Big Mound town, in Wayne County, Ills., by the hand of its clerk, William Book, five bonds of the denomination of one
82 thousand dollars each, bearing date April 1st, A. D. 1870, and due in twenty years, or April 1st, 1890, in full of the donation of said Big Mound town to the Springfield and Ills. S. E. Railway, and in full of all claims against said town by virtue of any and all votes for donation to said railway company.

June 1st, 1870.

(Signed) SPRINGFIELD & ILLS. S. E. R'Y,
By C. A. BEECHER,
Vice Pres'd't.

All of which is submitted this June 1, 1870.

Clerk.

Certificate of G. B. Davis, town clerk.

BIG MOUND TOWNSHIP,
Wayne County, Illinois:

I, G. B. Davis, town clerk in and for said town, do certify that the

within and foregoing is a full and true copy of the record in my office pertaining to the issuing and delivery of bonds to the Springfield & Illinois, S. E. Railway Company.

Given under my hand this 5th day of February, 1880.

G. B. DAVIS, *T. C.*

Certificate of town meeting and election of town clerk.

STATE OF ILLINOIS,
Wayne County, ss:

I, Joseph D. Shaeffer, clerk of the county court in and
83 for the county of Wayne and State of Illinois, do hereby certify that on the 6th day of April, A. D. 1869, at a town meeting held in the town of Big Mound, in said Wayne County and State of Illinois, John N. Upton was elected town clerk for said town for the ensuing year, as appears from certificate from the town clerk of said town, dated April 6th, 1869, and filed in my office on the 8th day of April, 1869; and I further certify that there is no evidence by certificate in my office or other evidence that any subsequent election was held in said town for town clerk for said ensuing year from April 6, 1869, to April election in the year 1870.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Fairfield this 6th day of July, A. D. 1880.

{ SEAL WAYNE COUNTY COURT, ILLINOIS. }

J. D. SHAEFFER,
County Clerk.

(Endorsed:) Filed July 9, 1880. J. A. Jones, clerk.

84 And afterwards, to wit, on the 10th day of September, A. D. 1880, the said complainants filed their replication in said cause, which is in the words following, to wit:

Compl'ts' replication.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

June term, 1880.

EDWARD BONHAM ET AL.
vs.
THOMAS B. NEEDLES ET AL. } Replication.

And the said plaintiffs, by their counsel, now come and say that they will prove their bill of complaint in this cause to be true, and the answer of the defendants and interpleader therein to be untrue, and this they pray may be tried by the court.

BEECHER & McCARTNEY,
Sol's for Compl'ts.

(Endorsed:) Filed Sept. 10, 1880. J. A. Jones, clerk.

Compl'ts' notice to take depositions.

And afterwards, to wit, on the 5 day of August, 1880, said complainants gave notice to said defendants of their intention to take certain depositions in the said , which notice is in the following words, to wit:

Circuit court of the United States, southern district of Illinois. June term, 1880. In chancery.

EDWARD BONHAM ET AL.
vs.
THOMAS B. NEEDLES ET AL.

To Geo. A. Sanders and N. M. Broadwell, att'ys for defendant:

Please take notice that on the 31st day of August, 1880, we shall attend at the office of John Keen, jr., a commissioner of said court, in the town of Fairfield, Wayne County, Illinois, for the purpose of taking the depositions of Michael Book, W. E. Cable, John N. Upton, Miles H. Harris, J. B. Borah, J. D. Shaeffer, Simon P. Koontz, and others, which depositions, when taken, will be offered in evidence on the trial of the above-entitled cause, now pending in said court. Said depositions will be taken before said John Keen, jr., as commissioner of said court, between the hours of 9 o'clock a. m. and 5 o'clock p. m. of said day, and will be continued from day to day until completed, when and
86 where you can attend, if you see proper, and cross examine said witnesses.

August 5, 1880.

JAMES McCARTNEY,
EDWIN BEECHER,
Att'ys for Compl'ts.

Received copy of the above notice this 7 day of Aug., 1880, and hereby acknowledge service of the same.

GEO. A. SANDERS AND
N. M. BROADWELL,
Att'ys for John A. Kernochan.

And afterwards, to wit, on the 10th day of September, A. D. 1880, said depositions were filed in said cause, which are in the following words, to wit:

Depositions.

UNITED STATES OF AMERICA,
State of Illinois, County of Wayne, ss:

The depositions of William E. Cable, Miles H. Harris, Jacob B. Borah, Michael Book, John N. Upton, Samuel G. Yates, and Alexander Clark, taken before me, a United States commissioner for southern district of Illinois, in the case pending in said court on the chancery side thereof, wherein Edward Bonham et al. are complainants and Thomas B. Needles et al. are defendants. Said depositions being taken
87 before me, at my office, in the town of Fairfield, county of Wayne and State of Illinois, on the 31st day of August, A. D. 1880, between the hours of 9 o'clock a. m. and 5 o'clock p. m. of said day, and

in the presence of E. Beecher, solicitor for the complainants, and Geo. A. Sanders, solicitor for John A. Kernochan, one of the defendants in said cause, and in pursuance of the notice hereto attached.

Wm. E. Cable:

WILLIAM E. CABLE, being first by me carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, saith:

My name is William E. Cable; my age is 21 years; my residence is Big Mound, Wayne County, Illinois; my occupation is that of a farmer. I am the town clerk of the town of Big Mound Township, and the custodian of the records and papers of said township. I have examined the papers and records of said township in relation to an election purporting to have been held in said township, to vote upon a question of issuing bonds to the Illinois Southeastern Railroad, and that the
88 only evidence he finds of such election is the following, to wit:

I, John N. Upton, do appoint Wm. Book, sr., deputy clerk for the time being in Big Mound town this July 22nd, 1869.

I, Wm. Book, deputy clerk of Big Mound town, in the county of Wayne and State of Illinois, do hereby certify that at an election held at the Yates school-house, on the 28th day of August, that the majority of the voters present voted in favor of giving bonds to the South Eastern Railway Company for the bonus. This August 28th, 1869.

WM. BOOK,
Deputy Clerk.

We, the undersigned, composing the board of town auditors, have this day levied two and one-half mills to the dollar for interest on township bonds in Big Mound town. This September 11th, 1869.

A. J. ARMSTRONG,
Supervisor.

WM. BOOK,
Deputy Clerk.

I furnished all the papers & records in my possession or
89 knowledge belonging to that township to Michael Book and A. M. Cable for examination. The Yates school house is on the southwest corner of the Yates farm, which is in the northwest corner of the township. The Yates school house is about four miles from the Little Mound school house.

Cross-examined:

I delivered the books and papers to Book and Cable for examination two weeks or a little more ago. Mr. Book was there about a week ago and examined them. The records in my possession show the following entry with reference to the places of holding elections, to wit:

At an election held at Little Mound, on Tuesday, the 6th of April, 1869, the vote was taken where the next election should be held, and by the voice of the electors it was moved to the Yates school house, in Big Mound Prairie.

At an election held at the Yates school house, in Big Mound Prairie, on Tuesday, the 5th day of April, 1870, the vote was taken where the next election should be held, and the voice of the electors was to the Little Mound school house.

Also the following, to wit:

90 The undersigned, as clerk of the town of Big Mound, in Wayne County, Illinois, would report that on the first day of June, A. D. 1870, he executed and delivered to the Springfield & Ills. S. R. Railway Co. five bonds of the denomination of one thousand dollars each, bearing date April 1st, 1870, and due April 1st, 1890, with interest at the rate of ten per cent. per annum, payable bi-annually at the office of the treasurer of Wayne County, Ills., for which bonds he took the company's receipt, of which the following is a copy:

Received of Big Mound Township, in Wayne County, Illinois, by the hands of its clerk, William Book, five bonds of the denomination of one thousand dollars each, bearing date April 1st, A. D. 1870, and due in twenty years, or April 1st, 1890, in full of the donation of said Big Mound town to the Springfield and Ills. S. E. Railway, and in full of all claims against said town by virtue of any and all votes for donation to said railway company June 1st, 1870.

(Signed) SPRINGFIELD & ILLS. S. E. R'Y,
By C. A. BEECHER, *Vice-Pres't.*

All of which is submitted this June 1st, 1870.

Clerk.

91 Re examined:

The records in my possession show that the annual elections for the years 1864, 1865, 1866, 1867, 1868, & 1869 were held at the Little Mound school house in said township.

W. E. CABLE.

Also at the same time and place came MILES H. HARRIS, who, after being by me first duly sworn, on his oath deposes as follows:

M. H. Harris:

My name is Miles H. Harris; my age is 60 years; my residence is Barnhill Township; my occupation is that of a farmer. I have resided constantly in Barnhill Township since the year 1860. I never resided in Big Mound Township. In the year 1867, I think it was, myself and Jacob D. Borah were elected supervisors for a district composed of four townships, being the townships of Barnhill, Jasper, Lamard, and Big Mound. I was never elected nor claimed to act as supervisor under any other election than that as above stated. In the discharge of my duties
92 as supervisor I claimed to act as district supervisor only, and not as township supervisor. If my name appears to any papers in connection with Big Mound Township, they appear so while I was acting as district supervisor, and not as township supervisor. I never acted as supervisor of Big Mound Township.

Cross-examined:

While acting as supervisor of the district I signed some township bonds of Jasper, Lamard, and maybe of Big Mound—I do not remember. I was never present at any election in Big Mound Township.

M. H. HARRIS.

Also at the same time and place came JACOB B. BORAH, who, after being first duly sworn, on his oath deposes as follows:

J. B. Borah:

My name is Jacob B. Borah; my age is 60 years; my residence is Jasper Township; my occupation is that of a farmer. I never lived in Big Mound Township. I was elected a district supervisor together with Miles H. Harris, about the year 1867, for the district composed of Barnhill, Jasper, Lamard, & Big Mound Townships, in Wayne County,
93 Illinois. While acting as such supervisor I never pretended to act as a township supervisor of Big Mound or any other township.

Cross-examined:

While acting as district supervisor I signed bonds of Jasper, Lamard, and Big Mound Townships; I do not remember the exact date, but think it was the spring of 1870. I think the bonds of Jasper amounted to $5,000, of Lamard to $10,000, and Big Mound $5,000.

JACOB B. BORAH.

Also at the same time came MICHAEL BOOK, who, after being first duly sworn, on his oath deposes and says as follows:

M. Book:

My name is Michael Book; my age is 57 years; my residence is Big Mound Township; my occupation is that of a farmer. I have resided constantly in Big Mound Township for 44 years. I think I have attended and been familiar with all the township elections in that township since its organization in 1860, or nearly so. The elections in
94 said township from 1860 to and including the election of 1869 were held at or near what is known as the Little Mound schoolhouse, as I now remember. The Little Mound school-house, or place of holding elections, on a direct line is about 3 miles from the Yates school-house. In August, 1869, there were about 200 voters in Big Mound Township. I have recently examined the books and papers belonging to Big Mound Township, which are now in the custody of Wm. E. Cable, who is the present town clerk. I made the examination at one time in connection with A. M. Cable, about two weeks ago, and I have examined them on'e since by myself. In my examination of the books and papers I found no petition for nor notice of an election to be held in said township to vote upon the question of issuing bonds for the donation to the Illinois Southeastern Railroad. I made a diligent search with the object of finding such evidence if any existed. I have no knowledge of any such petition or notice. When I made the examination I procured the papers from Wm. E. Cable.

95 Cross-examined:

About the two first election' after the organization of the township, I think, were held at the Yates school-house, and I find that in August, 1869, as appears from the records, an election was held there. I have no recollection of it, but presume I was there, as my name appears on the poll-book. I think that election was for the purpose of voting for or against issuing Big Mound Township bonds to the Illinois Southeastern Railroad in lieu of the donation. I think A. J. Armstrong was acting as supervisor and moderator of that election. I do not know how I came to know that there was to be an election held at that place at that time.

Question. State what was the custom and practice of calling elections there at that time.

(Question objected to by complainants.)

Answer. The custom in township elections, and I think for all elections, was for the town clerk to advertise by posting notices in public places in the township. I did not see any notices posted for
96 this election that I have any recollection of. There might have been notices posted and I not have seen them.

Ques. Can you state how the election went, whether for or against issuing the bonds?

(Question objected to by complainant.)

Ans. My understanding always has been it went in favor of issuing the bonds.

Re-examined:

All the knowledge I have of there being an election is what I find in the record and the general rumor that there was an election and my name on the poll-book. I have no recollection of being at the election. I get from the record and from the general rumor that the vote was in favor of issuing the bonds. John N. Upton was the town clerk at that time, and it was the duty of the town clerk to advertise elections, but I do not know whether any notices were posted for this election or not.

MICHAEL BOOK.

John N. Upton's testimony.

Also, at the same time and place, came JOHN N. UPTON, who, being first duly sworn, on his oath deposes and says:

97 My name is John N. Upton; my age is 38 years; my residence is Hamilton Co., Illinois; my occupation is that of a farmer. In 1869 I resided in Big Mound Township, Wayne Co., Illinois. I moved there in the fall of 1867. I was at the township election in Big Mound Township, in April, 1869. The election was held in Little Mound Prairie, to the best of my recollection. All the elections, so far as I remember, prior to 1869, were held at Little Mound. At the April election, 1869, a vote was taken to change the place of voting to the Yates school-house, which was carried; and at a school election held in the fall a vote was taken to change the place of voting back to Little Mound, which carried. I was elected town clerk at the April election in 1869, and qualified as such. I did not give notice for an election in 1869 to be held for the purpose of voting for or against giving the bonds of Big Mound Township for the donation voted to the Illinois Southeastern Railroad, nor did I ever give anybody orders or directions to give such no-
98 tice. There never was a petition filed in my office, signed by any number of freeholders, asking for such an election to be held, to my recollection; nor did I ever see or know of any such petition. I never gave to William Book, sr., any authority to act as deputy clerk, except the entry made July 23rd, 1869, in the town-record book. Anything Wm. Book, sr., did during that time he did as deputy clerk, and not as clerk. He never claimed at that time to act as clerk.

Cross-examined:

I do not have any recollection of any notices for an election Aug. 28th, 1869, being posted anywhere. I do not know who called the election. I was not at home from July 22nd, 1869, until the latter part of the year 1869. My family were there, but I was south of Mill Shoals, in White Co., Ills., threshing wheat. Wm. Book, sr., acted as my deputy while I was absent.

JOHN N. UPTON.

Samuel G. Yates's testimony.

Also, at the same time, came SAMUEL G. YATES, a witness introduced by consent of the parties, who, after being first duly sworn, on
99 his oath deposes and says:

My name is Samuel G. Yates; my age is 57 years; my residence is Big Mound Township; my occupation is that of a farmer. I have lived in Big Mound Township continuously since 1854. Yates school-house is on my farm, about a half mile from my house. The two first elections after the organization and the election of August 28th, 1869, were held there. The election of August 28th, 1869, was held for the purpose of voting for or against the issuing bonds for the donation to the Illinois Southeastern Railroad. There was an election previously held at Little Mound for the donation of $5,000 to the Illinois Southeastern Railroad. At the Aug. election, 1869, my recollection is that Jack Armstrong was moderator and Wm. Book, sr., clerk.

Ques. Do you know what the result of that election was?

(Ques. objected to by compl't.)

Ans. The result was, I suppose, in favor of it, as they gave the
100 bonds, but I did not stay until the election was over. I was present at the election in the forenoon; I voted and saw others vote. I was not present when the meeting was organized. Wm. Book, sr., the clerk of the election, is dead; Jack Armstrong lives in Franklin County, Ills.; the district supervisors, Miles H. Harris and Jacob B. Borah, had been elected previous to the election of Aug. 28th, 1869. I think they were elected in 1867.

Ques. Did you see any notice or calls for the election of Aug. 28th, 1869?

Ans. I did not; Billy Book told me that there were notices.

Ques. What did Billy Book tell you about posting notices?

(Ques. objected to by compl'ts.)

Ans. He told me he had posted up notices for an election to vote for or against giving bonds.

Cross-examined:

The Yates school-house is on the southwest corner of the S. ½ S. W. q'r sec. 4, T. 2 S., R. 7 E.; this is one mile from the north and
101 two miles from the west township lines, being in the northwest corner of the township. This has always been called three miles from the Little Mound school-house or place of voting. No general election was ever held at the Yates school-house. In the year 1869 there were about 200 votes in Big Mound Township. I never knew personally of any notices for the election of Aug. 28th, 1869, being posted, only what Billy Book told me. I had no knowledge of what the election was for, except what Mr. Book told me. I have no knowledge of the result of that election, except what Billy Book and the town clerk told me. About a year ago the clerk told me the result. I never saw the bonds. Billy Book told me that Charley came out with the bonds, and he signed them. I think the election for the donation was at the spring election in 1869, at Little Mound; I am not certain.

S. G. YATES.

Alexander Clark's testimony.

Also at the same time and place came ALEXANDER CLARK,
102 a witness introduced by consent, who, after being first duly sworn, deposes and says:

My name is Alexander Clark; my age is 42 years; my residence is

Big Mound Township; my occupation is that of a farmer. I have lived in that township all my life. There was an election held at the Little Mound school-house for a donation of $5,000 to the Southeastern Railroad; this was in the spring, I think; but do not remember the year. There was an election at the Yates school-house in Aug., 1869. I was present at the election. The election was to vote for or against the issuing of bonds for the donation to the railroad. I voted at the election and saw others vote. Wm. Book was clerk of the election. I did not stay until the polls were closed. I never saw any notice for the election, and I don't know how I came to know of the election.

Cross-examined:

I understood the election in August was for the same purpose as the first one; it was for something about the railroad. I can't positively say this last election was in August, but it was some time in the summer. I can't positively say whether the election in August was for the issuing the bonds instead of paying the money or not.

ALEXANDER CLARK.

Certificate of U. S. commissioner.

UNITED STATES OF AMERICA,
State of Illinois, County of Wayne, ss:

I, John Keen, jr., a United States commissioner for the southern district of Illinois, residing at Fairfield, Wayne County, Illinois, do hereby certify that I caused to come before me, at my office at Fairfield in said county and State, on the 31st day of August, 1880, William E. Cable, Miles H. Harris, Jacob B. Borah, Michael Book, and John N. Upton, witnesses on the part of the complainants, and Samuel G. Yates and Alexander Clark, witnesses introduced and examined by consent on the part of the defendants in said cause and on said day and at the place and between hours mentioned in the caption hereof, and in the presence of E. Beecher, attorney for the plainants and George A. Sanders, attorney for John A. Kernochan, one of the defendants in said cause, I proceeded to take the depositions of said witnesses, they being each by me first carefully examined and cautioned and each duly sworn to testify the truth, the whole truth, and nothing but the truth in the matters in controversy between Edward Bonham et al., complainants, and Thomas B. Needles, et al., defendants; and whereupon, in the presence of said witnesses and of said solicitors, I reduced the testimony of each of said witnesses to writing, as stated by him and as the same appears above written, and that in the presence of said solicitors I carefully read over to each of said witnesses the depositions so written and who thereupon each in my presence and in the presence of said solicitors subscribed his name thereto as the same above appears, said depositions being taken by me in pursuance of the notice hereto attached and in answers to questions put to said witnesses by said solicitors.

And I further certify that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in any manner in said suit or in the event thereof.

Witness my hand and seal at Fairfield aforesaid this first day of September, A. D. 1880.

JOHN KEEN, JR., [SEAL.]
U. S. Com'r Southern Dist. Ills.

(Endorsed:) Filed Sept. 10, 1880. J. A. Jones, clerk.

And afterwards, to wit, on the 10th day of September, A. D. 1880, a copy of the appointment of A. J. Armstrong was filed in said cause which is in the following words, to wit:

Copy of appointment of A. J. Armstrong as supervisor.

STATE OF ILLINOIS,
Wayne County, ss:

MAY 1, 1869.

To A. J. Armstrong, esq., of the town of Big Mound, in the county of Wayne, and State of Illinois, greeting:

Whereas the office of supervisor in the town of Big Mound is vacant: Now, therefore, we, the undersigned reposing, full confidence in your integrity and ability, have appointed and do hereby appoint you a
106 supervisor for said town, to hold said office until some other person shall be chosen or appointed in your stead; and you will have the same power and be subject to the duties and penalties of the law.

In witness whereof we have hereunto subscribed our names and affixed our seals. Big Mound, this the 1st day of May, 1869.

J. N. UPTON,
Town Clerk.
M. A. TAYLOR,
Collector.
JOHN CLARK,
Assessor.

Certificate as to truth of copy of above appointment.

STATE OF ILLINOIS,
Wayne County, ss:

I, Wm. E. Cable, town clerk of the town of Big Mound, in said Wayne County, do hereby certify that the above and foregoing, purporting to be an appointment of A. J. Armstrong, as supervisor of said town of Big Mound is a true and correct copy of said appointment from the records of said town, now in my custody.

Given under my hand and seal this 31st day of August, A. D. 1880.

WM. E. CABLE, [SEAL.]
Town Clerk of Big Mound Town.

(Endorsed:) Filed September 10, 1880. J. A. Jones, clerk.

107 And afterwards, to wit, on the 10th day of September, A. D. 1880, a copy of the appointment of Simon P. Koontz, was filed in said cause. it being in the following words, to wit:

Copy of appointment of Simon P. Koontz as supervisor.

STATE OF ILLINOIS,
Wayne County, ss:

FEBRUARY 22, 1870.

To Simon P. Koontz, esq., of the town of Big Mound, in the county of Wayne, and State of Illinois, greeting:

Whereas, the office of supervisor in the town of Big Mound is vacant: Now, therefore, we, the undersigned, reposing full confidence in your integrity and ability, have appointed and do hereby appoint you a super-

visor for said town, to hold said office until some other person shall be chosen or appointed in your stead; and you will have the same power and be subject to the duties and the penalties of the law.

In witness whereof we have hereunto subscribed our hands and affixed our seals at Big Mound, this 22 day of February, 1870.

JOHN N. UPTON,
Town Clerk.
JOHN CLARK,
Assessor.
M. A. TAYLOR,
Collector.

108 *Certificate as to truth of copy of Koontz's appointment.*

STATE OF ILLINOIS,
Wayne County, ss:

I, Wm. E. Cable, town clerk of the town of Big Mound, in said county, do certify that the above and foregoing, purporting to be an appointment of Simon P. Koontz as supervisor of said town of Big Mound, is a true and correct copy of such appointment from the records of said town now in my custody.

Given under my hand and seal this 4th day of September, A. D. 1880.

W. E. CABLE, [SEAL.]
Town Clerk of Big Mound Town.

(Endorsed:) Filed September 10, 1880. J. A. Jones, clerk.

Statement of election at Big Mound.

And afterwards, to wit, on the 10th day of September, the following statement of an election in Big Mound Town was filed in said cause, which is in the following words, to wit:

At an election held at Yates school-house, in Big Mound Town, in the county of Wayne, and State of Illinois, the 5th day of April, 1870, the following named persons received the number of votes annexed
109 to their respective names for the following described offices, to wit:

S. G. Yates rec'd forty-eight votes for justice of the peace.
T. B. Howard rec'd thirty-three votes for justice of peace.

John Clark	rec'd eighty	votes	for	assessor.
W. F. Hall	" one	"	"	"
L. J. Davis	" forty-one	"	"	collector.
M. A. Taylor	" thirty-seven	"	"	"
E. D. Neavill	" forty-nine	"	"	const.
Daniel Kenshals	" nineteen	"	"	constable.
John N. Upton	" thirty-five	"	"	town clerk.
H. Carter	" forty-three	"	"	"
Reuben Baker	" twenty nine	"	"	com. highways.
Leander Knowles	" forty-eight	"	"	" "
Wm. Iddings	" one	"	"	overseer of highways.
J. F. Clevenger	" eight	"	"	" "
Jas. Farmer	" twelve	"	"	" "
E. B. Fankle	" twenty-one	"	"	" "
L. Deem	" fourteen	"	"	" "
J. R. Powell	" twenty four	"	"	" "
G. M. Butler	" five	"	"	" "

F. Buffington rec'd two votes for overseer of highways.
S. P. Koontz " one " " " "

JNO. N. UPTON,
Town Clerk.
SIMON P. KOONTZ,
Moderator.

110 *Certificate of county clerk as to correctness of moderator's statement of election.*

STATE OF ILLINOIS,
Wayne County, ss:

I, Joseph D. Shaeffer, clerk of the county court in and for said county, do hereby certify that the foregoing is a true and correct transcript of certificate of the moderator and town clerk of Big Mound Township, which certificate was filed in my office on the 9th day of April, A. D. 1870.

In testimony whereof I have hereunto set my hand and seal this 6th day of September, A. D. 1880.

[L. S.]

J. D. SHAEFFER,
County Clerk.

(Endorsed:) Filed September 10, 1880. J. A. Jones, clerk.

And afterwards, to wit, on Monday, the 13 day of September, A. D. 1880, the following decree was rendered in said cause in the circuit court of the United States for the southern district of Illinois, at the June term thereof:

Decree.

111 EDWARD BONHAM, EDWIN BEECHER, James McCartney, and Adam Rinard,
v.
THOMAS B. NEEDLES, AUDITOR OF ILLINOIS; John C. Smith, treasurer of Illinois; John Morris, treasurer of Wayne County, Illinois; Joseph D. Shaeffer, county clerk of Wayne County, Illinois; George M. Book, collector of Big Mound Township, in Wayne County, Illinois; The First National Bank of Springfield, Illinois; the unknown owners and holders of the bonds and coupons issued by Big Mound Townsphip, dated April 1st, 1870; and John A. Kernochan. } In equity.

And now, on this 13th day of September, 1880, come the parties, by their counsel, and submit this cause to the court for final hearing on the pleadings and proofs; and the court, having heard and con-
112 sidered the same, and being sufficiently advised in the premises, doth order and decree that the complainants' bill be dismissed, with costs to be taxed against the complainants, except a docket fee.

And an appeal to the Supreme Court of the United States is allowed the complainants, on the entering into bond by them, or any one or more of them, to the defendant, in the penalty of five hundred dollars, conditioned as the law directs, with sureties to be approved by the court, within sixty days from this date.

And afterwards, to wit, on the 28th day of September, A. D. 1880, plaintiffs filed their bond for appeal of said cause to the Supreme Court of the United States, which bond is in the words following, to wit:

Plaintiff's appeal bond to Supreme Court U. S.

Circuit court of the United States, southern district of Illinois.

113	EDWARD BONHAM, EDWIN BEECHER, JAMES McCartney, Adam Rinard, *vs.* THOMAS B. NEEDLES, AUDITOR OF ILLINOIS; John C. Smith, treasurer of Illinois; John Morris, treasurer of Wayne County, Illinois; Joseph D. Shaeffer, county clerk; George M. Book, collector of Big Mound Township; The First National Bank of Springfield, Illinois; the unknown owners and holders of the bonds and coupons issued by Big Mound Township, and John A. Kernochan.	In equity.

Know all men by these presents that we, Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard, as principals, and Lee Linsley as surety, are held and firmly bound unto Thomas B. Needles and others, the above-named defendants, in the sum of five hundred dollars, for the payment of which, well and truly to be made and performed, we and each of us bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents, sealed with our seals, and dated this 14th day of September, A. D. 1880.

The condition of the foregoing obligation, however, is such that whereas the above bounden Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard have prosecuted an appeal to
114 the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the southern district of Illinois on the 13th day of September, A. D. 1880:

Now, therefore, if the above named Bonham, Beecher, McCartney, and Rinard shall prosecute their said appeal with effect, or shall answer all damage and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EDWARD BONHAM.	[SEAL.]
EDWIN BEECHER.	[SEAL.]
JAMES McCARTNEY.	[SEAL.]
ADAM RINARD.	[SEAL.]
LEANDER LINSLEY.	[SEAL.]

Certificate of worth of security.

STATE OF ILLINOIS,
Wayne County, ss:

I, Robert E. Mabry, clerk of the circuit court of Wayne County, Illinois, do hereby certify that I am well acquainted with the circumstances of Leander Linsley, whose name appears as security on the above appeal bond, and he is, in my opinion, ample and good
115 security for the amount therein stated, and that he is the owner

of unencumbered real estate to the amount of much more than the sum therein stated in Wayne County, Illinois, free of homestead or other incumbrance.

In witness whereof I have hereunto set my hand and the seal of said court this 15th day of September, A. D. 1880.

[SEAL.] R. E. MABRY, *Clerk.*

(Endorsed:) Approved Sept. 28th, 1880. S. H. Treat.

(Endorsed:) Filed September 28, 1880. J. A. Jones, clerk.

116 UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

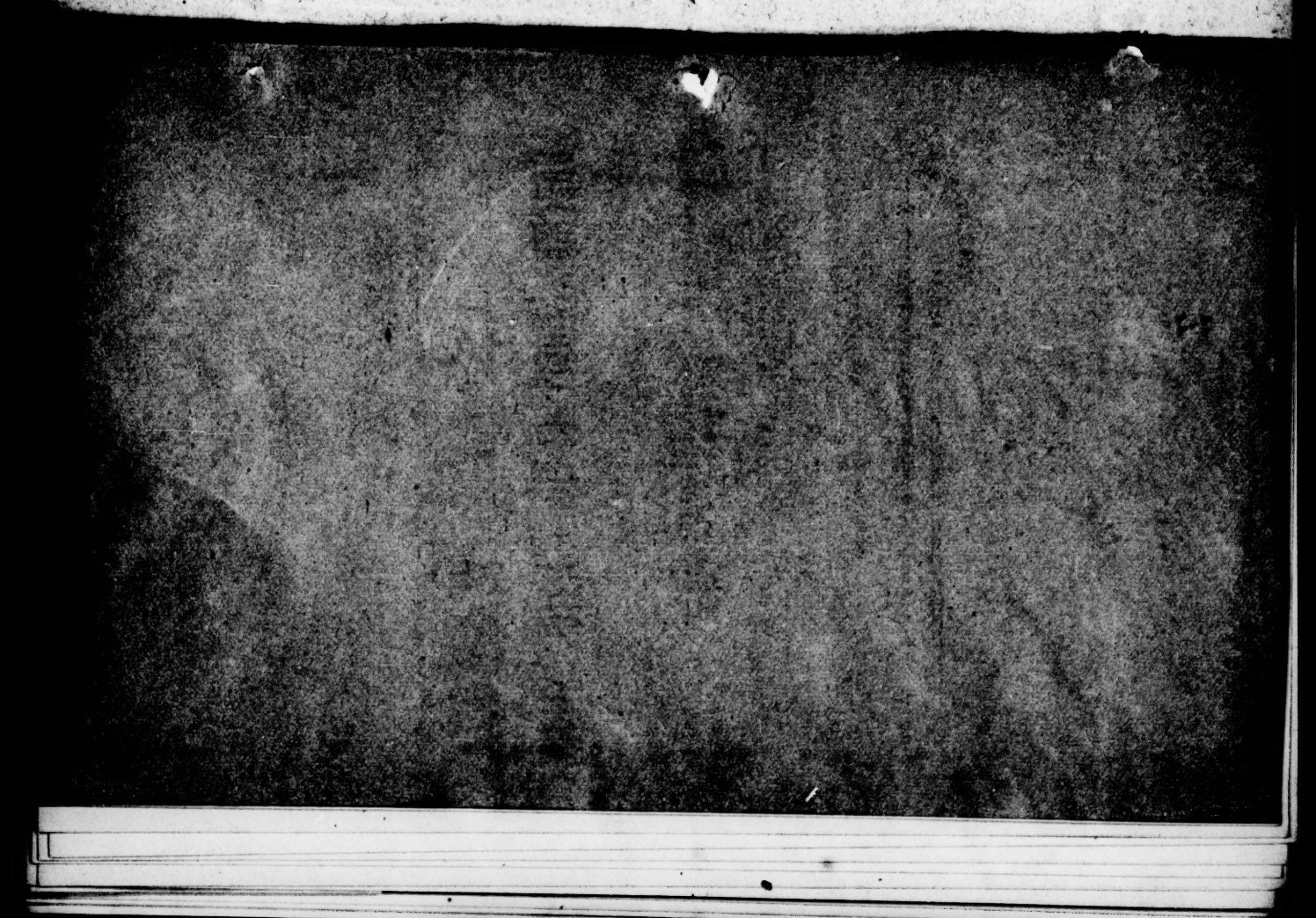
I, John A. Jones, clerk of the circuit court of the United States, within and for the southern district of Illinois, do hereby certify that the foregoing is a true and correct copy of all the papers filed and proceedings thereon had in a certain cause wherein Edward Bonham, Edwin Beecher, James McCartney, & Adam Rinard are complainants, and Thomas B. Needles, auditor of Illinois; John C. Smith, treasurer of Illinois; John Morris, treasurer of Wayne County, Illinois; Joseph D. Shaeffer, county clerk of Wayne County, Illinois; George M. Book, collecter of Big Mound Township, in Wayne County, Illinois; The First National Bank of Springfield, Illinois; the unknown owners and holders of bonds & coupons issued by Big Mound Township, dated April 1st, 1870, and John A. Kernochan are defendants, as fully as same appear of file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this fifth day of October, in the year of our Lord one thousand eight hundred and eighty, and of our Independence the one hundred and fifth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 1096. Edward Bonham, Edwin Beecher, James McCartney, and Adam Rinard, appellants, vs. Thomas B. Needles, auditor, and John C. Smith, treasurer of the State of Illinois, et al. S. Illinois C. C. U. S. Filed 8th November, 1880.

REC. 1096—4



OFFICE SUPREME COURT U. S.
FILED
JAN 7 1881
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

NO. 1096.

EDWARD BONHAM, EDWIN BEECHER, JAMES McCARTNEY AND ADAM RINARD, APPELLANTS,

vs.

THOMAS B. NEEDLES, AUDITOR, AND JOHN C. SMITH, TREASURER OF THE STATE OF ILLINOIS, ET. AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT OF APPELLANTS.

Supreme Court of the United States.

October Term, A. D. 1880.

NO. 1096.

EDWARD BONHAM, EDWIN BEECHER, JAMES McCARTNEY, and ADAM RINARD, APPELLANTS.

vs.

THOMAS B. NEEDLES, AUDITOR, AND JOHN C. SMITH, TREASURER OF THE STATE OF ILLINOIS, *ET. AL.*

BRIEF, AND ARGUMENT OF APPELLANTS.

[The references in this brief to the record are to the pages of the printed record.]

This was a bill filed by the appellants, who were complainants below, to enjoin the collection and payment of interest on certain bonds purporting to have been issued by Big Mound Township, in Wayne county, Illinois, and to declare such bonds, and the coupons thereon, void. Complainants were tax payers in said township, and filed the bill on behalf of themselves and the other tax payers of the county.

The several statutes referred to are printed herewith, immediately following the statement of the case.

STATEMENT.

The bill alleges that the Illinois S. E. R. R. Co. was chartered Feb'y 26, 1867. That Sec. 9 of said charter provided that towns along the line of the road under township organization, might make donations to the road on certain conditions. That such donation should be paid by the levy of a tax. That Wayne county was under township organization. That a pretended election was held in Big Mound Township on November 10, 1868, to vote on *donating* $5.000 to the road. That said act did not authorize such townships to issue bonds. That on February 24, 1869, an amendment to said charter was passed, Sec. 5 of which amendment recited, that whereas certain townships in Wayne and Clay counties had voted donations to said road, therefore it was enacted that such townships be authorized to issue bonds there-

for without again submitting the proposition to a vote. Provided, the voters of such township might, at any general or special election or town meeting vote for or against issuing such bonds.

On Feb'y 28, 1867, the legislature of Illinois passed an act entitled "An act to change the time of electing certain officers in a county therein named." Instead of changing the time of electing any officers, said act entirely remodeled the township organization of Wayne county, to which it alone applied. It divided the county into four Supervisors districts, the second being composed of Big Mound, Lamard, Barnhill and Jasper:—provided that each district should have one supervisor, except the second which should have two. By section 2, the election for supervisors was fixed for the first Tuesday in April,—the same as the general township law. By Sec. 3, the powers and duties of said board were confined to county business; and Sec. 7 provided for an officer to transact the township business formerly done by the Supervisor of each township. This act was not submitted to a vote of the people. Under it, the records show (p. 25, 26), that on the 18th of May, 1867, M. H. Harris and J. B. Borah, neither of them residing in Big Mound, were elected supervisors of said district No. 2. No election was attempted to be held in April as required by the act, nor is there anything to show whether any notice of election was given, or why it was held in May.

Propositions were submitted by said R. R. Co., to be voted on by said township on Nov. 10, 1868, and it is alleged a majority was in favor of donating $5,000 to the road.

John N. Upton was duly elected clerk of said township on April 6, 1869, (p. 24, 29, 34 of record). On Feb'y 22, 1870, S. P. Koontz was, under Sec. 7 of said act of Feb'y, 1867, appointed supervisor, (p. 37 of record). Upton was reelected clerk April 5, 1870, (p. 38).

There is on the records of the township this entry: "I, John N. Upton, do appoint Wm. Book, sr., deputy clerk *for the time being*, in Big Mound, this July 22d, 1869." This order is not signed by any one. (P. 27 of record.)

On April 1, 1870, the bonds in question purport to have been issued (See copy of bond, p. 19 and of coupon, p. 21, of record): but were delivered to the R. R. Co. June 1, 1870 (p. 28). They were signed "M. H. Harris and J. B. Borah, supervisor," and countersigned "Wm. Book, Clerk."

There is not in the bill or answer any allusion to any vote in relation to issuing bonds, or for donation, except that of Nov. 10, 1868; but in the township records, which were introduced as evidence, is this entry: "I, Wm. Book, deputy clerk of Big Mound town, in the county of Wayne and State of Illinois, do hereby certify, that at an election held at the Yates school house on the 28th day of August, 1869, that the majority of the voters present voted in favor of giving bonds to the South Eastern Railway Company for their bonds. This August 28th, 1869. Wm. Book, Deputy Clerk." This is all that appears on the records in relation to such election;—nothing to show that any petition was filed asking that an election be held,—no

evidence of any notice having been given, and nothing indicating how, or by whom the election was held and conducted, nor anything showing for what purpose it was called. (P. 24 of record).

On July 16, 1870, M. H. Harris made a certificate, calling himself "Supervisor Big Mound Tp., Wayne county," in order to have the bonds in question registered by the Auditor of State; (p. 19). and on the 19th they were so registered. (P. 20 of record).

The depositions of the following witnesses were offered as evidence:

M. H. Harris said, at the date of the bonds he resided in Barnhill township and had for many years;—never resided in Big Mound. Was elected as district supervisor, but was never elected or claimed to act under any other election. That in the discharge of his duties as such he claimed to act as district supervisor only, and not as township supervisor. "I never acted as supervisor of Big Mound."

J. B. Borah said he resided in Jasper township; never lived in Big Mound. "While acting as such supervisor I never pretended to act as township supervisor of Big Mound or any other township." (P. 52 of record.)

W. E. Cable. Was town clerk. Had searched the records of the township and found no petition for, or notice of, an election in August, 1869. Sets forth the same records as copied above. (P. 31 of record). Elections had been held at Little Mound for 6 years preceding Aug., 1869.

Michael Book, said he had examined the papers and records of Big Mound diligently, and could find neither petition nor notice. The usual place of holding elections in that township was Little Mound, which was 3 miles from the Yates school house. That he has no recollection of an election in August, 1869, but presumes he was there as his name appears on the poll books. Thinks the election was for voting for or against issuing bonds, but has no distinct recollection of it. (P. 33 of record).

S. G. Yates and A. Clark say they were at such election at the Yates school house. Never saw any notice—don't know how they came to be there. (P. 35 of record).

J. N. Upton: was elected clerk of Big Mound in April, 1869, and qualified. The regular election in 1869 was at Little Mound and had been for some years. Was ordered changed at that election. Never gave notice in August, 1869, to vote on giving bonds, nor gave any one else orders or directions to give such notice. "There never was a petition filed in my office, signed by any number of freeholders, asking for such an election to be held, to my recollection, nor did I ever see or hear of any such petition." Wm. Book never claimed to act as clerk,—only as deputy. (P. 34 of record).

When the pretended election of Aug., 1869, was held, the law then in force required, that to call a special election the supervisor, town clerk, and justice, or any two of them, together with at least 12 freeholders of the town, should, in writing, file in the office of the town clerk a statement that a special meeting was necessary, &c., setting forth the object of the meeting;

and the clerk, or in his absence the supervisor, should put up notices in *five* public places in the town, giving at least ten days notice, &c. It also provided: *"The place of holding special town meetings shall be at the place where the last annual town meeting was held."* The evidence shows the last annual town meeting was held at Little Mound,—this special election was held at the "Yates school house,—three miles away."

The case was submitted on the pleadings and evidence, when the court dismissed the bill and gave judgment against complainants for cost. (P. 39 of record). Complainants bring the case here by appeal.

The following are the several acts of the legislature and clauses of the constitution referred to:

CONSTITUTION OF ILLINOIS OF 1848.

ART. 3, SEC. 23. No private or local law which may be passed by the general assembly shall embrace more than one subject, *and that shall be expressed in the title.*

ART. 7, SEC. 6. The general assembly shall provide, by a general law, for a township organization, under which any county may organize whenever a majority of the voters of such county, at any general election shall so determine.

ART. 9, SEC. 5. The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes.

COPIES OF STATUTES OF ILLINOIS.

ARTICLE IV.

SEC. 1. TOWN MEETINGS.] The citizens of the several towns of this state, qualified by the constitution to vote at general elections, shall annually assemble and hold town meetings in their respective towns, on the first Tuesday of April, at such place in each town as the electors thereof, at their annual town meetings, shall from time to time appoint; and notice of the time and place of holding such meeting shall be given by the town clerk, by posting up written or printed notices in *three* of the most public places in said town, at least 10 days prior to said meeting; and if there shall be a newspaper published in said town, such notice shall be inserted at least once therein, prior to said meeting. Gross' Stat., p. 744.

OFFICERS TO BE CHOSEN.

"SEC. 2. There shall be chosen, at the annual town meeting in each town, one supervisor, one town clerk, one assessor, one collector, two constables, two justices of the peace: *Provided*, that justices of the peace and constables shall be elected only once in four years." Laws of 1861, 220.

SEC. 9. SPECIAL TOWN MEETINGS.] Special town meetings shall be held when the supervisor, town clerk and justice of the peace, or any two of them, together with at least 12 freeholders of the town, shall, in writing file in the office of the town clerk a statement that a special meeting is necessary to the interest of the town, setting forth the object of the meeting; and the

town clerk, or in case of his absence, the supervisor, shall post up notices in *five* of the most public places in the town, giving at least 10 days notice of such special town meeting, setting forth the object of the meeting, as contained in the statement filed in his office. Such notice shall likewise be inserted at least once in a newspaper published in the town, if any is published therein. *The place of holding special town meetings shall be at the place where the last annual town meeting was held;* but in case such place shall be found inconvenient, the meeting may adjourn to the nearest convenient place.

SEC. 10. POWER OF SPECIAL TOWN MEETING.] The electors, at special town meetings, *when properly convened,* shall have power:

1. To fill vacancies in the office of justices of the peace, and to fill vacancies in the office of constable, or any town officer, where the same shall not have been already filled by appointment.

2. To provide for raising money for repairing highways, or building or repairing bridges, in cases of emergency, and to direct the building or repairing thereof.

3. To act upon any subject within the power of the electors at the annual town meeting, which was postponed at the preceeding annual town meeting, to be considered at a future special town meeting, for want of time. But special town meetings *shall have no power to act on any subject not embraced in the statement and notice calling the same.* Gross' st., p. 746.

ARTICLE 5. CONDUCTING TOWN MEETINGS.

Gross' St. of 1869, p. 746.

SEC. 1. The electors present at any time between the hours of 9 and 10 o'clock, in the forenoon of the day on which there is annual or special town meeting, shall be called to order by the town clerk, if there be one. In case there be none, or he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting.

SEC. 3. The town clerk, last before elected or appointed, shall be clerk of the town meeting, and shall keep faithful minutes of its proceedings; in which he shall enter, at length, every order or direction and all rules and regulations made by such meeting.

SEC. 4. If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present, shall act as clerk of the meeting.

SEC. 14. The minutes of the proceedings of every town meeting subscribed by the clerk of said meeting, and by the presiding officer, shall be filed in the office of the town clerk, within two days after such town meeting.

ARTICLE 7.

FILLING VACANCIES. SAME LAW.

SEC. 1. Whenever any town shall fail to elect the proper number of town officers, to which such town may be entitled by law, or when any person

elected to any town office shall fail to qualify as such, or whenever any vacancy shall happen in any town office from death, resignation, removal from the town, or other cause, it shall be lawful for the justices of the peace of the town, together with the supervisor and town clerk, to fill the vacancy or vacancies occasioned or occurring in consequence of either or any of the causes above specified, by warrant, under their hands and seals; and the persons so appointed shall hold their respective offices during the unexpired term of the persons in whose stead they have been appointed and until others are chosen or appointed in their places, and shall have the same powers, and be subject to the same duties and penalties as if they had been duly chosen by the electors.

SEC. 2. Whenever a vacancy shall occur, from any cause, in any or either of the offices enumerated in the forgoing section, as composing the board of appointment of town officers, in case of vacancy, it shall be lawful for the remaining officers of such appointing board to fill any vacancy or vacancies thus occurring, except in cases of vacancy in the office of justice of the peace, which shall be filled only by election. Gross St., p. 750.

CHARTER OF ILLINOIS S. E. R. R. Co.

Private laws of 1867, Vol. 2, p. 753.

SEC. 9. Any town in any county under township organization is hereby authorized and empowered to donate to said company any amount, not exceeding thirty thousand dollars: *Provided*, that no such donation by any such town to said company shall be made unless the question of making such donation shall have been first submitted to the legal voters of such town, at an election hereafter to be provided for: and, *provided further*, that no donation so made, nor any part thereof, nor any interest accruing thereon or upon any part thereof, shall be paid or become due or payable to said company until said company or its assigns or employees shall have completed their said railroad or some certain part of said road or its branch, as may have been agreed upon by the contracting parties.

SEC. 10. No such election for the purpose of submitting the question of making a donation by any such town authorized by section nine of this act to donate to this company shall be held until the directors of said company shall have filed a proposition to the inhabitants of said town with the county clerk of the county wherein such town is situate, and a copy of the same with the clerk of said town, and, if there be a newspaper published in such county, said proposition shall be published in full in the same, whereupon it shall be the duty of the clerk of such town to post up written or printed notices of the time and place of holding such election in at least ten public places in each town, together with a copy of said proposition, at least twenty days before the day for holding such election; at which election the legal voters of such township shall vote for or against such proposition; and if a majority of all the votes cast be for such proposition the trustees of said town shall so certify the same to the clerk of the county court wherein the

town is situate, and such clerk shall, upon the application of the company, after the donation so voted by any such township shall become due or payable under the terms and conditions of the proposition upon which said election was ordered, compute and assess upon all the taxable property in said town an amount sufficient to pay such donation, or any part or installment of the same so then being due and payable; which taxes so assessed shall be collected as other taxes; and the taxes so collected shall be paid to the treasurer of said company. And the election herein provided shall be held, canvassed and retured as other regular town elections.

AMENDED CHARTER.

Private laws of 1869, Vol. 3, p. 308, 310.

SEC. 5. And whereas, certain townships in Wayne and Clay counties have voted donations to said railway company, said townships are hereby authorized and empowered to issue township bonds for the amount so donated, without submitting the proposition again to be voted upon,—said bonds to be issued in sums not less than one hundred nor more than one thousand dollars each, with interest coupons attached, drawing interest at the rate of ten per cent. per annum, payable semi-annually at the county treasurer's office, in each county where such townships are located,—said bonds to be payable in five years or any time thereafter, not exceeding twenty years, at the option of the townships; and said bonds to be signed by the supervisors thereof or by the supervisor or supervisors of the district wherein such township is located, and to be countersigned by the township clerk of the respective townships; and said bonds to be delivered, properly executed, to the president of said railway company, when the conditions are complied with as contained in election notices and propositions submitted to and voted upon by the people of said townships; and said townships shall each, by its proper corporate authorities, provide, in due time. by a levy and collection each year of a sufficient tax on its assessed property to pay the interest on its bonds, as it accrues half yearly, as aforesaid, and ultimately to provide for the principal of said bonds at maturity: *Provided*, that said bonds shall be placed in the hands of a trustee, on the demand of said railway company, as hereinafter provided: *and, also, provided*, that such townships may determine, by a vote of their electors, at any regular or special town meeting or election, whether they will issue bonds or not in payment of the donations heretofore voted to said company.

An act to change the time of electing certain officers in a county therein named.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That the board of supervisors of Wayne county shall consist of five persons, to be elected in the following manner, to-wit: the townships of Four Mile, Hickory Hill and Arrington shall constitute the first electoral district of said county, and shall be entitled to one member of said board; the townships of Big Mound, Lamard, Jasper and Barnhill,

shall constitute the second electoral district in said county, and be entitled to two members of said court; the townships of Leech, Massillon, Mt. Erie and Elm River shall constitute the third electoral district in said county, and be entitled to one member of said board; the remainder of said Wayne county shall constitute the fourth electoral district, and shall be entitled to one member of said board.

SEC. 2. There shall be elected on the first Tuesday in April, one thousand eight hundred and sixty-seven, and every four years thereafter, in each of said electoral districts, one member of the board of supervisors of said Wayne county, who shall each hold their office for the term of four years, or until their successors are elected and qualified, except in the second district of said county, which shall elect two members of said board, as provided in section one of this act, who shall hold their office for the said term of four years, and until their successors are elected and qualified.

SEC. 2. Said board, so composed, shall, at their first meeting, organize by electing one of their number chairman, for the term of four years, who shall be allowed to vote upon all questions as other members of said board. And said board, when so organized, shall do and perform all duties enjoined upon the board of supervisors acting under the general township organization laws of this state, and shall have all the powers and privileges of boards of supervisors acting under such general township organization laws; and any three of said board shall constitute a quorum for the transaction of any business.

SEC. 4. The members of said board shall each receive such compensation per diem as they may fix, not to exceed four dollars per day, for each day in which said member shall be engaged in attending said court.

SEC. 5. Said board of supervisors shall hold at least two meetings in each year, commencing on the first Mondays in June and December, and may hold such special meetings as they may deem necessary for the transaction of business. Any special meeting of the said board may be called by any two members of said board, by depositing with the county clerk of said county a written notice, addressed to the other members of said board, of the time of holding such special meeting; which notice shall be deposited with the county clerk at least five days before the time of holding such special meeting. It shall be the duty of the county clerk, when such notice of special meeting of such board shall have been filed with him, to give immediate notice of such special meeting and of the time of holding the same, which notice may be served upon such members of said board, to whom it is addressed, by the sheriff of said county, by copy or by reading the same to them.

SEC. 6. In case of any vacancy occurring in said board, by death, resignation, or otherwise, it shall be the duty of the county clerk of said county to immediately advertise a new election to fill such vacancy, by causing to be posted up in each township in such electoral district where such vacancy shall occur, at least three written or printed notices, of the time and pur-

pose of such special election, at least ten days before the day of such election. And all elections held under the provisions of this act, for members of said board, whether for the full term or to fill a vacancy, shall be conducted as other elections provided by law, and returns made by the proper judges and clerks thereof, in the usual manner, to the clerk of the county court of said county, and shall be canvassed as other county elections.

SEC. 7. All duties not herein provided for to be done and performed, by virtue of the township organization laws of this state, by the supervisors of towns in the different towns, shall be done and performed in said county by a justice of the peace in such town, who shall be selected by the town clerk, town assessor, and town collector, for that purpose, each year, as soon as practicable, after the election of town officers in such town; and said town clerk, assessor and collector shall have power to fill the vacancy occasioned by death, resignation or refusal to serve of said justice of the peace. Such justice of the peace, so appointed shall hold such appointment for the term of one year, and until his successor shall be appointed; and his appointment shall be entered of record by the township clerk; and he shall receive the same compensation provided by law for the supervisor for like services. But nothing in this act shall be construed to change or in any manner affect the places or manner of voting, as now established by law, in the different procincts in said county.

SEC. 8. This act shall be deemed and taken as a public act, and be in force from and after its passage. APPROVED, February 28, 1867.

REGISTRATION LAW.

SEC. 1. REFUNDING OF STATE TAXES.] Whenever any county, township, incorporated city or town, shall have created a debt under the provisions of any law of this state, to aid in the construction of any railway or railways, that shall be completed within ten years after the passage of this act, whose line shall run near to, into or through said county, township, city or town, it shall be lawful for the state treasurer, and he is hereby required, immediately upon receiving the revenue for each year, to place to the credit of such county, township, city or town so having incurred such indebtedness, in the state treasury, annually, for and during the term of ten years, all the state taxes collected and paid into the state treasury on the increased valuation of the taxable property of said county, township, city or town, as shown by the annual assessment rolls over and above the amount of the assessment roll of the year 1868, excepting the state school tax and the two mill tax provided for by the constitution of this state for the payment of the state debt. And whenever any county, township, city or town shall have created a debt as aforesaid, it shall also be lawful for the collector of taxes, and he is hereby required, annually, for and during a term of ten years, to pay into the state treasury all the taxes collected for any purpose whatever, on the assessment of the said railroad or railroads for whose aid the said debt was incurred, including the roadbed and superstructures, and all fixtures, and appurtenances thereof, the

locomotives, cars, machinery and machine shops, depots and all other property, real and personal, of said railway company within such county, township, city or town; and immediately upon receiving the same the state treasurer shall place to the credit of such county, township, city or town in the state treasury the whole amount so received, except the state school tax and the two mill tax provided by the constitution of this state for the payment of the state debt; and it shall be the duty of the said collector of taxes to furnish the state auditor a separate and detailed account of the amount of taxes collected from said railway or railways, at the time of his annual settlement with the state auditor. And the state treasurer shall give to said collector separate receipts for the respective amounts paid into the state treasuay to the credit of said county, and said receipts shall be taken and received by the county court, or other legal authorities, as vouchers for the amount collected on account of the county and local assessments on said railroad property in the annual settlement with such collector, and the several amounts of money in this section provided and ordered to be placed to the credit of such county, township, city or town, shall be applied by the state treasurer to the payment of the bonded debt of such county, township, city or town, as hereinafter provided.

SEC. 2. REGISTRATION OF BONDS.] And the county clerk or other proper officers, upon the issuing of the bonds in payment of said railroad debt, shall make a registration thereof in a book to be kept for that purpose in his office, showing the date, amount, number, maturity, and rate of interest of such bonds, and upon the subscription or donation to what railroad the same was given. And the said bonds and the bonds heretofore issued and still unpaid, in order to receive the benefits of this act shall be registered *by the holder thereof* at the office of the auditor of public accounts, who shall cause the same to be registered in a book kept for that purpose. Such registration shall show the date, amount, number, maturity, and rate of interest of such bond, under what act and by what county, township, city or town issued; and the auditor shall, under his seal of office, certify upon such bond the fact of such registration, for which registration and certificate the auditor shall be entitled to a fee of $1 from the *holder of each bond.*

SEC. 7. CONDITION OF REGISTRATION.] And it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the benefits or advantages to be derived from this act, until after the railroad in aid of the construction of which the debt was incurred, shall have been completed near to, or in such county, township, city or town, and cars shall have run thereon; and none of the benefits, advantages, or provisions of this act sall apply to any debt unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township, city or town, under the provisions of the laws of this state, and a majority of the legal voters living in said county, township, city or town were in favor of such aid, subscriptions, or donation, and any county, township, city or town, shall have the right upon making any

subscription or donation to any railroad company to prescribe the conditions upon which such bonds, subscriptions, or donations, shall be made, and such bonds, subscriptions, or donations, shall not be valid and binding until such conditions precedent shall have been complied with; and the presiding judge of the county court, or the *supervisor of the township*, or the chief executive officer of the city or town that shall have issued bonds to any railway or railways, immediately upon the completion of the same near to, into, or through such county, township, city or town, as may have been agreed upon, and the running of the cars thereon, shall certify, under oath, that all the preliminary conditions in this act required to be done to authorize the registration of such bonds, and to entitle them to the benefits of this act, have been complied with, and shall transmit the same to the state auditor with a statement of the date, amount, number, maturity, and rate of interest of such bonds, and to what company, and under what law issued, and thereupon the said bonds shall be subject to registration by the state auditor, as hereinbefore provided.

ASSIGNMENT OF ERRORS.

The appellants now assign the following as errors of the circuit court, viz:

1. The court erred in not holding the act of Feb. 28, 1867, districting Wayne county into supervisor districts, unconstitutional and void, being in violation of Sec. 23, Art. 3, and Sec. 6, Art. 7 of the constitution of Illinois of 1848.

2. The court erred in not holding the election of supervisors under said law on May 18, 1867, void, because not held at the time required by said law.

3. The court erred in not holding the acts of M. H. Harris and J. B. Borah in signing the bonds in question, void, for the reason that said law did not give them any authority to act as supervisors in Big Mond township, and because the evidence shows they did not claim to be supervisors of that township.

4. The court erred in not holding the act of Wm. Book in countersigning said bonds, void, because the evidence shows he was not clerk, and there was at that date, April 1, 1870, a clerk duly elected and acting; and for the further reason that there could be no deputy township clerk.

5. The court erred in not holding the pretended election of Aug. 28, 1869, void, for the reason that no application by freeholders and officers for such election was made as required by law, or notice of such election given, and for the further reason that such election should have been held at the Little Mound, instead of the Yates school house.

6. The court erred in not holding the registration by the State Auditor of said bonds void, for the reason that M. H. Harris, who made the certificate on which registration was based was not supervisor of Big Mound, and had no right or authority to make such certificate, the law requiring such certificate to be made by the supervisor of the township.

7. The bonds purport to have been issued by virtue of an election of Nov. 10, 1868 There being at that time no law authorizing such bonds to be issued, the holder should have shown by evidence that authority existed to issue them, if claimed to have been issued under any other law.

8. The testimony of M. Book in relation to the "custom and practice of calling elections," p. 33 of record, and in relation to the result of the election, p. 34 of record, and the testimony of S. G. Yates, p. 35, of record, as to what "Billy Book had told him," was improper and irrelevant, and ought to have been excluded by the court.

9. The court erred in dismissing complainants' bill and rendering judgment against them for costs.

Wherefore appellants respectfully pray that the action of said circuit court may be reviewed and reversed.

BRIEF.

1. The act of Feb. 28, 1867, was in conflict with Sec. 23, Art. 3, constitution of Illinois of 1848, and, was void.

The title gave no intimation of the subject of the act.

People v. Inst. of Prot. Deaconesses, 71 Ill. 229.

Johnson v. People, 83 Ill. 432.

Durkee v. City of Janesville, 26 Wis. 700.

Stuart v. Kinsellee, 14 Min. 524.

People v. Hills, 35 N. Y. 449. 453.

do *v. O'Brien*, 38 N. Y. 193.

Kerrigan v. Force, 68 N. Y. 381-3.

Brinz v. Weber, 81 Ill. 290-1.

2. Said act was also void, being in violation of Sec. 6, article 7 of same constitution.

People v. Brown et al. 11 Ill. 478.

3. The election for supervisors under said law, on May 18, 1867, was void, as the law only provided for an election on the first Tuesday in April.

4. M. H. Harris and J. B. Borah were not the constituted authorities of Big Mound township.

Township of Elmwood v. Marcy. 92 U. S. 289.

Marshall et al v. Silliman et al, 61 Ill. 218.

Wiley et al v. *do.* 62 Ill. 170.

5. Wm. Book was not clerk of Bigmound. His appointment by the clerk was "deputy." There is no provision of law in Illinois for appointing a deputy town clerk. Without statute authority there can be no deputy clerk.

Garneau v. Dozier, 10 Otto, 7.

6. If the township clerk was absent the statute provided how the vacancy should be filled.

Gross St. of Ill. of 1869, p. 750, *Ante* p. 5.

7. Book only claimed to act as deputy. There can be no *defacto* deputy. *Lippincott v. Town of Pana*, 92 Ill., 32.

8. The same law that provided for district supervisors also provided for an officer to transact township business. Ante. p. 9. The records show S. P. Koontz was so appointed in Big Mound. p. 37 of record. There could be no *defacto* officer, when there was a *dejure* one acting.

9. The object of the law authorizing bonds to be registered by the State Auditor was to enable the holders of such bonds to receive the benefits of increased taxes. Registration was not necessary to the validity of the bonds. The law required the supervisors *of the township* should make a certificate

that law or election. If the act was valid for one purpose it was for all. Sec. 3 of the act, p. 8 ante, expressly limitied the duties of the District supervisors, elected under said law, to county business. They were intended to take the place of the county Board of Supervisors under the general law. That section said, "and said board shall do and perform all duties enjoined upon the board of supervisors acting under the general township organization laws of this state." Under the general law each township had its own supervisor who was supreme within that township. The *board* acted only in county matters;—the individual supervisor alone acted in the township. This board of District Supervisors had the same authority, if legal, and no more as the county board.

Sec. 7, of the same law, ante, p., 9 provided for the selection of a Justice of the peace who should perform the duties formerly performed by township supervisor. S. P. Koontz was, on Feb'y. 22. 1870, appointed such supervisor for Big Mound, p. 37 of record. Then it follows that although M. H. Harris and J. B. Borah might have been elected under said law, yet they were District Supervisors and not township. They had no power to do any act except as a *board*. Individually, neither one of the five provided for by that law, had any power to act. Borah and Harris both swore they did no act except as members of the board. And it also follows that their signing the bonds in controversy as "supervisors," did not give them any power to bind Big Mound. Such act, beyond any question, was *ultra vires*. The bonds they pretended to issue were not issued by the constituted authorities of Big Mound township. They were not the bonds of Big Mound, and are void.

Nor had Wm. Book, who countersigned such bonds as clerk, any authority to do so. The only color of title to such office was the pretended appointment as deputy. P. 27 of record. In that appointment he was styled "deputy" *for the time being*; and Upton, the clerk, in his testimony, p. 34 of record, says, "Wm. Book sr. acted as my deputy *while I was absent*;" both showing conclusively that such appointment was only temporary. That pretended appointment was July 22, 1869. There is nothing to show that Upton was absent a day during 1870. He signed the appointment of S. P. Koontz as supervisor, Feby. 22, 1870:—was re-elected clerk, April. 5. 1870; was present and certified to the proceedings at that election. P. 38 of record; and yet Wm. Book, who only claimed to have been a *deputy* the year before, *during the clerk's absence*, took upon himself, on April 1, 1870, when the clerk was attending to the regular duties of his office, to countersign these bonds *as clerk* of Big Mound township. A deputy clerk can only be appointed by virtue of a statute. *Garneau v. Dozier*, 100 U. S. 7. There never was a law in Illinois, authorizing the appointment of a deputy township clerk. If the office was vacant, the law provided how it should be filled. Ante, 5. The clerk was required to take an oath of office. Book took none. The clerk was responsible for wrongful acts. What was Book's responsiblity? When a legal deputy performs an act he still does so in the

name of his principal. *Garneau v. Dozier, supra.* Book seems to have ignored Upton, the clerk, and acted on his own account. The only entries on this record showing any action of Book's was the entry of the pretended election, Aug. 28, 1869; an order in relation to an assessment, Sept. 11, 1869, and his signing these bonds. It must be plain to any one that Book's pretended appointment was a temporary one, "*for the time being*," and as Upton swore, "*during his absence.*" He was not even deputy at any other time. If only deputy during Upton's absence, he was not deputy, much less clerk, when he signed these bonds. There could be but one clerk at that time. That one was John N. Upton. He was legally elected and qualified, and was acting, and Book was not deputy. His act in countersigning these bonds in April, 1870, was an usurpation.

We insist the pretended election of August 25, 1869, was void for the following reasons:

1. No petition of freeholders and officers was filed as required by law.
2. No notice of such election was given.
3. The election was held at a place unauthorized by law.
4. A special town meeting had no power to vote on issuing these bonds.

That a petition or application should have been filed with the town clerk is clear; it is the reading of the law. Ante p. 5, Sec. 9. Without a statute authorizing such special election, none could be held. Such law must, substantially at least, be complied with, or all subsequent proceedings will be like the action of a court without jurisdiction. In *Bissell v. City of Jeffersonville*, 24 Howard, 296-8, *Clifford*, Justice said: "If no such petition was presented, or if it was not signed by the requisite number of legal voters, the law did not authorize the common council to ratify and affirm the subscription." In *Williams* v. *Town of Roberts*, 88 Ill., 23, the court said: "The corporate authorities of the town (the electors), must and can only act when called together, it is obvious any action by them can, at best, amount to no more than a mass meeting." See also to same effect, *Lippincott* v. *Town of Pana*, 92 Ill., 24.

There is another reason why this petition or statement should have been filed with the clerk. The last clause of Sec. 9, of the statute of Illinois, authorizing special town meetings to be held, reads as follows: "But special town meetings shall have no power to act on any subject *not embraced in the statement and notice* calling the same." Ante p. 5. Who can tell from this record whether the voting on the question of issuing bonds was one of the subjects submitted to the voters at that election? The law positively and imperatively required this. The legislature said, on such subjects can you act at special meetings, and on no others.

In obedience to law, and when met were called together

Of the same character is our second objection to this election,—that no notice thereof was given. If this election had been a general one and the time fixed by law, the failure to give notice although such was required, would have been an irregularity only, and not void, because every one is presumed to know the law; but in special elections when the time is fixed by some officer or other person, the notice is an absolute essential to authorize such election to be held. In *Thatcher* v. *People* 93 Ill., 244, *Scholfield* Justice, said: "It is fair to assume that many remained away and refrained from voting who would have been present and voted had they been notified an election would be had on these questions. The want of notice goes to the existence of the power (and not merely its defective execution,) to issue the bonds." *Harding v. R. R. Co.* 65 Ill., 90. *Williams* v. *Roberts* 88 do. 11, and in *Gaddis* v. *Richland Co.*, 92 Ill., 125: "This was a special election. * * * The notice not having been given by the proper officer, it was defective, and did not authorize the election board to hold it. *McClure* v. *Township of Oxford*, 94 U. S. 433. That the legislature intended to make a distinction between general and special elections or town meetings is apparent from this further fact: In general elections notices were only required to be put up in *three* public places, ante p. 4, Sec. 1; while in special elections or town meetings such notices was to be put up in *five* places. Ante p. 4, Sec. 9. Why make this difference if it was not to be complied with.

The election was void because held at a place not authorized by law. For six years prior to August 1869, all general elections had been held at Little Mound. At the annual election in April, 1869, a vote was taken in favor of changing the place of election to the Yates school house; but though such place could be changed at the annual election, still the law then in force expressly required that, "The place of holding special town meetings shall be at the place where the last annual town meeting was held." Ante, p. 5, Sec. 9.

There is good reason for this requirement. Persons residing in the township are presumed to know where the general elections of their town have been held; and to prevent any misunderstanding as to the place when a change has been made, the law very wisely provided that until another annual election, all special elections should be held at the place where the last annual election was held. The annual town meeting in April, 1869, was held at Little Mound. P. 33, 34 of record. A special election could not, under the law cited above, have been held anywhere else during that year; therefore, for that reason, the proceedings at the Yates school house in Aug. 1869, were void.

Again, we assert there was no authority for holding a special election in Aug. 1869, to vote on this question of bonds, either at the Yates school house or elsewhere. At the annual or general town meeting all the affairs of the township were before the voters and might lawfully be acted on; but at a special meeting their authority was limited to the subjects named in the statute. Such subjects were as follows:

1. To fill vacancies in town offices.

2. To provide for raising money for repairing highways, or building or repairing bridges, in cases of emergency.

3. "To act upon any subject within the power of the electors at the annual town meeting, which was postponed at the preceeding annual town meeting, to be considered at a future special town meeting, for want of time." Ante p. 5. Sec. 9. This is the only authority given to the people at a special town meeting. Unless then it was commenced at the April annual town meeting, and continued for want of time, it was not within the power delegated to the township at special meetings. The defendants, or holders of the bonds, have not shown such antecedent action. We have shown it was not done. W. E. Cable, the present township clerk, in his deposition, p. 31 of record, sets out all the records of the township which refer to this election or the bonds, and not a word of any action having been had at the annual April election. We therefor insist, that even if an election had been called, and at the proper place, unless the business had been commenced at the annual town meeting and postponed *for want of time*, the special town meeting had no power to act, and such election would have been void.

We have heretofore argued on the theory that an election was held in August, 1869, or attempted to be held. Is there any evidence in this record that such was the case? The proceedings of the townships at their regular or special meetings, must be preserved in their records. Sec. 3, p. 5, ante, provides that the clerk "shall keep faithful minutes of its proceedings, in which he shall enter, at length, every order or direction and all rules and regulations made by such meeting." How then must this be proven? Not by the uncertain recollection of witnesses. It was, or should be, a matter of record, and must be proven by the record. If it were shown there had once been a record which was destroyed, then secondary evidence would be admissible. Until that is done the records of the township were the proper and only evidence. Do these records in the present case, show any such election? The only entry of any kind is the pretended certificate of Wm. Book, p. 24 of record. In that he does not give the whole number of votes, —the number for and against the proposition,—what the election was called for, or any other fact necessary to make it a sufficient record. For all we know that election was called for some other purpose, and when so assembled the voters present voted as reported. But had Book any power to make such certificate? Sec. 14, ante p. 5, provides: "The minutes of the proceedings of every town meeting subscribed by the clerk of said meeting,

and by the presiding officer, shall be filed in the office of the town clerk, within two days after such town meeting." Armstrong was moderator of said election. P. 35 of record. It was the duty of the moderator, or presiding officer, to declare the result of the election; and yet for some reason he fails to make the certificate required by the law. We may well presume he knew the proceedings were void. and refused to certify thereto. Not being signed by the moderator, the certificate of Book was unauthorized and void.

An attempt was made by counsel, on the argument before the circuit court, to make a distinction between elections and town meetings. They admitted the law to be as we give it, but claimed that it did not apply to an election,—only to town meetings. We answer, if there was any difference, which there is not, the same reason exists in case of an election as town meeting. But in township matters all proceedings are conducted in town meetings; the election of township officers, voting for subscriptions of stock when authorized, and anything which the township as a corporation had a right to do. *People* v. *Dutcher*, 56 Ill., 144. *Dunnovan* v. *Green*, 57 do., 63. If it was an election to vote for state or county officers it would be different. In the case of town meetings it is conducted by a moderator and town clerk, ante, p. 5; at elections for officers other than township, it is conducted by an election board composed of the supervisor, assessor and collector. R. S. of 1874, p. 1074, Sec. 56. But this election if held at all was held by a moderator and clerk. See testimony of S. G. Yates, p. 35 of record, where he says, "Jack Armstrong was moderator and Wm. Book, Sr., clerk." Then it was a town meeting, if there was any difference.

Bonds can only be issued by a municipality, when properly authorized by appropriate legislation. The officers of a township cannot issue them without the consent of the people. Such officers are not the constituted authorities of the township. *Township of Elmwood* v. *Marcy*, 92 U. S., 294. If the law giving such authority, requires certain precedent conditions they must be complied with. Thus, in *Town of East Oakland* v. *Skinner*, 94 U. S., 258, "Doubtless the legislature can impose or omit conditions in its discretion. But when the sanction of a popular vote is required, it must be obtained." Also *Com's* v. *Bolles*, id., 107. In the present case the legislature required such vote. It was not had and the bonds are void.

Upon whom is the affirmative of proving the performance of such precedent conditions? Upon the party claiming the benefit of such legislation. —the holders of the bonds. They must show the legality of the paper they hold. If the bonds were executed by the legal authorities of the township, and contained recitals, we admit the doctrine of this court to be that the corporation would be bound by such recitals; and why? Because the officers or tribunal whose duty it was to decide whether such conditions

had been complied with, by such recitals make that decision, and the corporation is estopped from denying it. *Bissell* v. *City of Jeffersonville*, 24 H., 299. *Comm.* v. *Bolles*, 94 U. S., 107. But if there are no recitals, there is no evidence of such compliance, and the holder must show it affirmatively. *Town of Colome* v. *Eaves*, 92 U. S., 492. *Marsh* v. *Fulton*, 10 Wallace, 675. *Comm* v. *Bolles*, *supra*. In *Block* v. *Comm'rs*, 99 U. S., 686, Strong, Justice, after giving the holding of this court where there were recitals, said: "But in the absence of any recitals it may be conceded that he (the holder), was bound to inquire whether a majority vote had been returned for the issue of the bonds."

What are the facts in the present case? The bonds in controversy contain this recital: "This bond is one of a series of bonds issued by said township to aid in the construction of the Illinois Southeastern Railway, in pursuance of an authority conferred by an act of the general assembly of the State of Illinois, entitled 'An act to incorporate the Illinois Southeastern Railway Company,' approved Feb'y 25, 1867, and an act amendatory thereof, approved Feb'y 24, 1869, and an election of the legal voters of the aforesaid township held on the 10th day of November, 1868, under the provisions of said act.' (See copy of bond, p. 19 of record). The court will remember that the original charter of the road did not authorize townships to issue bonds. It simply gave them power to vote donations, to be paid by taxation. It was the amendment passed in 1869, which gave power to issue bonds. Ante p. 7. When the election in November, 1868, (which was recited in the bonds), was held, the people could not have voted to issue bonds, for no law authorized it; and if they did so vote it would have been void. *Mc Clure* v. *Township of Oxford*, *supra*. The recital in the bond that it was issued by authority of an election of the legal voters of the aforesaid township held on the 10th day of November, 1868, under the provisions of said act," referred to the original charter passed in 1867, when the issuing of bonds was not authorized. It is probable that the parties interested in having these bonds issued, intended to convey to purchasers the idea that they were issued by virtue of the election of 1868. We concede that they were so issued, and then answer in the language of Waite, Ch. J. in *Mc Clure* v. *Town of Oxford*, *supra*; "If a purchaser may be, as he sometimes is, protected by false recitals in municipal bonds, the municipality ought to have the benefit of those that are true." These bonds *were* issued under the election in 1868, *as recited in them*, and we claim the benefit of such recital.

The proposition, p. 22 of record, which was submitted by the railroad company to the township to be voted on in Nov., 1868, contained a clause, that if the necessary legislation should be obtained to issue bonds, the company would accept such bonds in lieu of the amount to be raised by tax. We have been told our opponents now assert that in voting for the proposi-

tion so submitted, in Nov., 1868, the township voted to issue bonds. To this assumption we have several answers. It was at best, only a privilege given to the township if they saw fit to avail themselves of it, after the necessary legislation was obtained. It was not an absolute vote that they would do so. If that is its construction, that it left nothing for the township to do afterwards but issue the bonds, it was unquestionably void, as held by numerous decisions of this court and of Illinois,—that the election cannot be held until after the passage of the law authorizing it. That proposition was to issue bonds running not less than five nor more than twenty years. Which did the people vote for, five, ten or twenty years bonds? The ones in controversy run absolutely twenty years. How can this court know that if the proposition had been submitted to issue twenty years bonds it would have received a single vote? The people might have been willing to bind themselves to pay the interest on such bonds for five years, when they would not for twenty. Again, the proposition was to issue bonds bearing interest at the rate of ten per cent per annum; the present bonds bear the same rate of interest payable *semi-annually*. When did the people of Big Mound ever vote on a proposition to pay interest in that manner instead of *annually?* These bonds appear not to be the ones contemplated by the proposition submitted. There is a further answer. The proposition in question required subsequent legislation. That legislation was the amendment to the charter in Feb'y, 1869. If the vote in Nov., 1868, was sufficient, why did the legislature in such amendment say, "*Provided*, that such township may determine, by a vote of their electors, at any regular or special town meeting or election, whether they will issue bonds or not in payment of the donations heretofore voted to said company." Ante 7. If they had already voted to issue the bonds, this proviso was surplusage. The legislature understood, that an election held before the passage of the law, was void, and therefore inserted this proviso,—giving to the township the privilege of saying what they would do. The legislature meant that condition should be complied with before bonds could issue. It was not done. The bonds on their face do not purport to be a compliance with this proviso. The principal defendant herein,—the holder of the bonds,—never alluded in his answer in any manner to any other election than that of Nov., 1868. That proviso was not complied with: the bonds were issued without authority, and are void.

It has been intimated that defendants would claim they were protected by the certificate of registration of the State Auditor. The registration law of Illinois is very different from the law of several other states, and passed for a different purpose. We believe in Kansas and Missouri, the law expressly provides that bonds should not be valid until so registered. In such case the registration was an essential to their validity. The legislature of Illinois passed an act, ante p. 9, providing for the repayment to certain munici-

palities of taxes collected in excess of the assessment of 1868, which taxes were to be applied on indebtedness incurred for building railroads, or on bonds issued therefor; and to enable the holder of such bonds to receive the benefits of such law they were required to register their bonds as therein provided, and those who did not so register should not receive such tax. That was the only registration law of the state, and that its object. The only penalty for not registering was a failure to receive such excess of tax. It was not the party issuing the bonds that was to cause them to be registered, but the holder. Ante p. 10. The bonds now in suit bore date April 1, 1870; they were said to have been delivered to the railroad company June 1, but were not registered until July 19, 1870;—long after they had passed from the possession or control of the makers.

Sec. 7 of the registration act, (ante p. 10), provided that no bonds should be registered or receive the benefits of such act, until after the road should be completed near to, or in, such county, township, &c., and cars run thereon. The amendment to the charter authorizing bonds to be issued did not require the road to be commenced even before the bonds might issue.

The same section 7, referred to above, provided that in townships the supervisor should certify to the auditor that the conditions had been complied with. There was no provision for any other officer to make such certificate. If M. H. Harris, upon whose certificate they were registered, was not supervisor of Big Mound, there was no authority for the auditor to register the bonds. We have before shown, that both from the law under which he was elected, and his own testimony, he had nothing to do with that township. His certificate was no more than that of a stranger. There was no certificate of the supervisor as required by law. The auditor was not authorized to register on any other evidence, and consequently there was no legal registration.

There is reason for saying the recitals in the bonds, when made by the officers of the township, are binding on the township. Such officers have the control and management of the affairs and records of the township, and are supposed to know whereof they certify. But what did M. H. Harris know of Big Mound? He said he was never at an election there. If he had examined the records produced here of that township, could he have told whether any legal election had ever been held? He knew nothing about it. The auditor knew nothing except what he got, or ought to, from the certificate of others; and if such other certificate was a nullity the registration must have been equally so.

We have yet to find a single decision of this or any other respectable court, holding that such registration by the auditor is a protection to a *bona fide* holder, except in states where such registration is made a condition of validity.

We have before admitted the doctrine of this court to be, that recitals in bonds executed by the proper officers of a municipality, bind the municipality; but when such bonds are signed, and recitals made, by others than the proper officers, such recitals do not bind the corporation. This distinction between the acts of the officers, and agents, is clearly made in *Wilson v. Salamanca*, 99 U. S., 504, and cases there cited.

Who were the corporate authorities of Big Mound township? The voters and the supervisor and clerk. This record establishes, beyond any question, that M. H. Harris and J. B. Borah, were not supervisors of Big Mound. They both so swore. The law under which they were elected gave them no right in that township. At the time of the execution of these bonds S. P. Koontz was appointed and acting supervisor. Their signing as supervisors did not make them such, nor give them any authority to bind the township. As well might we say if Jones signed Brown's name to a note, that would bind Brown, as to say Harris and Borah's actions would bind Big Mound. In *Anthony v. County of Jasper*, 101 U. S. 693 Waite, Ch. J. said: "Purchasers of municipal securities must always take the risk of the genuineness of the official signatures of those who execute the paper they buy. This includes not only the genuineness of the signature itself, but of *the official character of him who makes it.*" Harris and Borah were not supervisors, and Book was not clerk, and the purchaser of bonds executed by them must bear the consequences.

They tell us Harris and Borah were agents of Big Mound. If so they were agents not of the towns selecting; agents over whom the town had no control; agents who were not responsible to the town for anything they might do or neglect to do.

The question of the validity of these bonds has been passed upon by the Supreme Court of Illinois, and they were held void. Lamard was one of the townships which composed the 2d Supervisors District, under the act of Feby 28, 1867. That town issued bonds to the same road, and under the same conditions as Big Mound. The vote was held the same day, the recitals in the bonds were the same, and the bonds signed by the same persons, Harris and Borah. The court in its opinion said: "The persons claiming to act as supervisors were not even residents or voters in that township, but resided in another township. The General Assembly could as well have authorized a citizen of another county to create the debt." *Shaeffer et al v. Bonham et al*, 95 Ill. 381. In the same case the court held there was as entire want of authority to issue these bonds, and the payment of interest was no estoppel. That decision being a construction of a statute of the state will be followed by this court. *Fairfield v. County of Gallatin*, 100 U. S. 52.

We have now reviewed the principal points which occur to us. As the circuit court filed no opinion in the case we have been at a loss how to answer points that may be raised by our opponents. Several propositions have been suggested in our brief, which are there sufficiently explained. To us the whole matter from the first step to the execution and delivery of these bonds, has around it an air of mystery. The law districting the county was passed within two days of the passage of the railroad charter. Why should men in other townships be selected to execute so important papers as these bonds, instead of men living in the township,—men whom the people had not chosen,—who had no interest whatever in the township. Why select a man to countersign these bonds who only claimd to have been a deputy the year before, instead of the clerk who was elected by the people, and in whom the people confided. Why procure the certificate of Harris in order to have the bonds registered, who never was at an election in that township,—who swore he never claimed or pretended to act as supervisor of that township, and consequently could not have known as well of the matters of his certificate, as the supervisor living there. To the uninitiated these things look strange.

In order to present our conclusions in more compact form, we respectfully submit, that we have established the following propositions.

1. That the act of Feb'y 28, 1867, districting Wayne county was unconstitutional and void.
2. That the election held thereunder in May, 1867, was also void.
3. That Harris and Borah who signed the bonds in suit were not supervisors of Big Mound, and their acting as such could not bind the township.
4. That the acts of Wm. Book the pretended deputy clerk were without authority and void.
5. That the bonds containing no recitals of an election after the law authorizing their issue, if such election was held it was obligatory on the holder to show, by proof, such facts, and that such election was held and conducted according to the requirements of the law in force at that time.
6. That an election at the Yates school house was without authority and void.
7. That if Harris and Borah were not supervisors of the township when they signed the bonds, a *bona fide* holder is not protected by any recitals in them.
8. That a special town meeting had no power to act unless the business had been commenced at a regular meeting and continued for want of time.
9. That the records of the township are the only evidence of the transactions of the township, and that the records introduced in this case do not show an election as required by law.
10. That the bonds purporting to have been issued by Big Mound township were issued without authority of law and are void.

THOS. J. HENDERSON.
Atty. for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES OF AMERICA.

OCTOBER TERM, A. D. 1880.

NO. 1096.

EDWARD BONHAM, *et. al.*

vs.

THOMAS B. NEEDLES, *et. al.*

STATEMENT.

On the 1st day of June, 1870, the Clerk of Big Mound Town, Wayne County, Illinois, reported the delivery to the Springfield and Illinois Southeastern Railway Company of five bonds of said town, of $1,000 each, dated April 1, 1870, and due in twenty years, or April 1, 1890, with interest at ten per cent. per annum, payable annually, at the office of the Treasurer of Wayne County, Illinois. These bonds recite that they were issued by said township to aid in the construction of the Illinois Southeastern Railway, in pursuance of the authority conferred by an act of the General Assembly of the State of Illinois, entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25, 1867, and an "Act amendatory thereof, approved February 24, 1869," and an election of the legal voters of the aforesaid township held on the 10th day of November, 1868, under the provisions of said act, and were

signed by M. H. Harris and J. B. Borah, Supervisor, and William Book, Clerk.

There were two elections held by the freeholders of Big Mound Township before the issue and delivery of these bonds—one named on the face of the bonds, November 10, 1868, under a proposition from the Directors of the Illinois Southeastern Railway Company, in accordance with the provisions of its charter of incorporation and under the act of the Legislature of February 25, 1867, which was, that the Town of Big Mound should donate $5,000 to aid in the construction of the Illinois Southeastern Railway Company's road—*or issue bonds in lieu of such donation if the requisite legislation could be obtained at the ensuing session of the Legislature of Illinois*. This proposition for a cash donation was to be levied and collected and paid over one-third in the year of 1869, one-third in the year 1870, and the remaining third in the year 1871.

The requisite legislation referred to in the proposition was obtained in the amendatory act of 1869, recited in the bonds.

The proposition submitted to the voters of Big Mound Township, Wayne County, Illinois, on the 10th day of November, 1868, was carried by a vote of 47 for donation to 35 against, with a majority of 12 votes for the proposition.

There is no dispute about the regularity of this election or the result thereof. On the 28th of August, 1869, in pursuance of the authority conferred by the amendatory act of 1869, to the charter of the Illinois Southeastern Railway Company, another election was held in the town of Big Mound, Wayne County, Illinois, at Yates School House, at which election the proposition of issuing the bonds of the town of Big Mound, Wayne County, Illinois, to the amount of $5.000, in lieu of and in payment of the cash donation above referred to, was submitted to the voters of Big Mound Town, Wayne County, Illinois, and the result of this election was, "*that a majority of the voters present voted in favor of "giving bonds to the Southeastern Railway Company for their bonus.*" This is the entry of the Town Clerk in his book as to the result of this election.

The interest on these bonds so issued was regularly paid twice a year for ten years, without any notice whatever of any defect or irregularity claimed in their issue, up to the filing of complainants bill at the October term of the Wayne County, Illinois, Circuit Court, 1879.

These bonds were purchased in open market by John A. Kernochan, soon after their issue, for a good and valuable consideration, and he has been the owner and holder of the whole issue of $5,000 ever since, and he

or his agents have regularly collected the interest for ten years or thereabout, on said bonds.

Said bonds were registered in the office of the Auditor of Public Accounts of the State of Illinois, on the 19th day of July, 1870, on the sworn certificate of M. H. Harris, that all the preliminary conditions requisite for registration of said bonds had been fully complied with, and signs himself *Supervisor Big Mound Township, Wayne County*—dated July 16, 1870.

The bill of complainants was filed in the Wayne County Circuit Court at the October term, 1879, and the prayer was for an injunction, restraining all the officials of the Township of Big Mound, the County of Wayne, and the State of Illinois, interested by law, from levying, collecting and paying any moneys for interest or principal on said bonds, and that they, on a final hearing of the bill be declared null and void, and cancelled.

On the 2d day of the October term, 1879, of the Wayne County Circuit Court, John A. Kernochan, by George A. Sanders, his attorney, appeared in said Court, and filed his petition for removal to the Circuit Court of the United States, and tendered his bond, as the statutes direct. The petition was fully argued by counsel and granted by the Court, and the bond approved and the case certified to the United States Circuit Court for the Southern District of Illinois, holden at Springfield, Illinois.

On the 13th day of September, 1880, the case was tried on its merits, on bill, answer, replication, proofs and argument of counsel, and the Court decreed "*that the complainants bill be dismissed, with costs to be taxed against the complainants, except a docket fee.*"

Wayne County, Illinois, under an act of the Legislature of the State of Illinois, in force February 28, 1867, was divided into four Districts, and all of the Districts had a Supervisor each, except the Second District, including Big Mound Township. which had *two Supervisors.* This Second District consisted of the old Townships of Big Mound, Lanard, Jasper and Barnhill Townships, and under an election held May 18, 1867, in said County of Wayne, M. H. Harris and J. B. Borah were elected Supervisors for the Second District; Borah by 213 votes, and Harris by 251 votes, Big Mound, Lanard, Barnhill and Jasper Townships all participating in this election of these District Supervisors. While this law was in force and during the term of office of said Supervisors Borah and Harris, these $5,000 of Big Mound Township bonds were issued and delivered as above stated.

From the above decree of the United States Circuit Court for the Southern District of Illinois complainants have appealed to the Supreme Court of the United States.

BRIEF AND ARGUMENT OF GEO. A. SANDERS, SOLICITOR FOR JOHN A. KERNOCHAN.

It is admitted that John A. Kernochan is the owner and holder of the $5,000 of Big Mound Township bonds in controversy in this suit, and that he purchased the same in good faith for a valuable consideration, long before the filing of the complainants bill, and that he had no notice whatever of any irregularity in their issue, and that he is a citizen of Massachusetts and has been for the last ten years, and that the complainants are all citizens of the State of Illinois, and the interest on said bonds has been regularly paid by said Big Mound Town, since their issue to the date of filing of complainants bill as the same became due. Transcript of record, page 21, stipulations.

These bonds were issued under the Act of February 25, 1867, incorporating the Illinois Southeastern Railway Company, and an act amendatory thereto passed by the General Assembly of Illinois, February 24, 1869, and an election held by the voters of Big Mound Township on the 10th day of November, 1868. The bonds recite upon their face—"That "this bond is one of a series of bonds issued by said township to aid in "the construction of the Illinois Southeastern Railway, in pursuance of "the authority conferred by an act of the General Assembly of the State "of Illinois, entitled "an act to incorporate the Illinois Southeastern Rail- "way Company," approved February 25th. 1867, and "an act amendatory "thereof," approved February 24th, 1869, and an election of the legal "voters, of the aforesaid township, held on the 10th day of November, "1868, under the provisions of said act. In witness whereof, the said "Township of Big Mound has caused these presents to be signed by its "Supervisor, and countersigned by its Clerk, this first day of April, 1870.

" M. H. HARRIS,

" J. B. BORAH,

"WILLIAM BOOK, Clerk. Supervisor."

Transcript A, page 19 and 20, copy of Bond.

There were five of these bonds for $1,000 each, dated April 1, 1870, and due in twenty years, with interest at the rate of ten per cent. per annum, payable semi-annually, and at the option of the town payable at any time after five years. These bonds were registered on the sworn statement of the Supervisor, M. H. Harris, dated July 16, 1870, and duly registered July 19, 1870, and delivered June 1st, 1870, to the Springfield & Illinois Southeastern Railway Company. Transcript of Record, Page 20 and 21.

The act of incorporation of the Ill. Southeastern R'y Co., February 25th, 1867. [Private Laws, Ill. Vol. 2, 1867, p. 753, Sec. 9.] provides that "any

"town, in any county, under township organization is hereby authorized "and empowered to donate to said Company any amount not to exceed "$30,000. Provided that no such donation, by any such town to said "Company shall be made, unless the question of making such donation "shall have been first submitted to the legal voters of such town at an "election hereinafter to be provided for."

Section 10 of the same Act, Page 753. Private Laws of Illinois, provides that no such election for a donation to said Railway Company shall be held until the directors of said Railway Company have submitted a proposition to the voters etc.

In pursuance of this authority the directors did submit a proposition, which was that the Town of Big Mound, Wayne County, Illinois, then under township organization should donate $5,000, to aid in the construction of the Illinois Southeastern Railway, one-third to be levied and collected by special tax and paid to the Treasurer of said Railway Company, in the year of 1869, and one-third in 1870, and the remaining one-third in 1871. *Or in lieu of this money donation if the requisite Legislation could be obtained at the ensuing session of the Illinois Legislature*, the Town of Big Mound was to issue bonds to the amount of $5,000, and the Railway Company were bound under the proposition to accept the bonds instead of the money. Transcript of Record, Page 22. Proposition for Donation.

On this proposition an election was held in the Town of Big Mound, Nov. 10. 1868, and resulted in 82 votes being cast, of which 47 were for donation and 35 against, majority for donation, 12. Transcript of Records, Page 23 and 24. As to the regularity of this election there can be no question, as records above referred to show that it was duly called, and the required number of notices posted. According to those records the clerk posted printed copies of the proposition of the Railway Company to the Town of Big Mound asking for a donation of $5,000, *or the issue of bonds providing due legislation was obtained* and the election was called for the *adoption or rejection of the proposition.*

We insist that under this vote of the Town of Big Mound, *while under Township organization*, (not yet having become a part of a district of four Townships,) favoring the proposition *to donate* $5,000 *or issue bonds to that amount*, and the Act of Feb'y. 25, 1867, and the amendatory Act of 1869, recited in the bonds, that the power to issue said bonds was ample by the proper authorities of that Township.

If there had been no other action on the part of the Town of Big Mound, we claim that with such recital, as are on the bonds, they would be good

in the hands of an innocent holder, purchased soon after their issue for a valuable consideration.

Town of Coloma vs. Eaves, 2 Otto, page 484.
Town of Venice vs. Murdock, 2 Otto, page 494.
Town of Concord vs. Savings Bank, 2 Otto, page 629.

"That a popular election having been held, and a majority of the votes "having been in favor of the appropriation, it may be conceded that pay- "ment of the appropriation could lawfully have been made in town bonds, "instead of money, if the donation itself was authorized. The real ques- "tion is, whether the authority to make the donation existed when it was "made."

But there was *another election* held in Big Mound Township on the question of issuing these bonds, in pursuance of the Amendatory Act of February 25, 1869, in lieu of the cash donation voted for in the optional proposition at the election of the 10th of November, 1868. The requisite legislation referred to in that proposition was obtained in the Amendatory Act of 1869, and an election held at Yates' School House, in Big Mound Town, August 28th, 1869, *at which the Clerk certifies that a majority of the voters present voted in favor of giving bonds to the Southeastern Railway Company for their bonus.* Transcript of Record, page 27 and 28.

This election is embraced in the recitals, as it was held under the Amendatory Act of 1869, and its results, are as much part of the recitals as spread upon the face of the bonds under the Amendatory Act of 1869. Private Laws of Ills., Vol. 3, Page 310, Sec. 5. It provides that certain townships in Wayne and Clay Counties, Illinois, having "*voted* "*donations to said Railway Company* (the Illinois Southeastern), *said* "*townships are hereby empowered and authorized to issue township bonds* "*for amount so donated,*" *without submitting the proposition again to be voted upon.* We insist that the Town of Big Mound having cited this Amendatory Act of 1869, as part of the authority for issuing their bonds, that they are bound by it, and that another election was not necessary to make valid their bonds, as far, at least, as power to issue them is concerned.

Commissioners of Johnson county vs. January, 4 Otto, page 202.
Commissioners of Douglas county vs. Bolles, 4 Otto, page 104.
San Antonio vs. McHaffy and cases there cited, 6 Otto, page 312.

In the latter part of said section, last above quoted, is a proviso "that "such townships may determine, by a vote of their electors, *at any regu-* "*lar or special town meeting or election, whether they will issue bonds or* "*or not, in payment of the donations heretofore voted to said Company.*"

Under this last proviso of the Amendatory Act of 1869, the election was held at Yates' School House, in Big Mound Township, August 28th, 1869, "*wherein a majority of the voters present voted in favor of giving bonds* "*to the Illinois Southeastern Railway Company for their bonus.*" Transcript of Record, page 27 and 28.

Appellant's counsel aver that there was no election held at Yates' School House, August 28, 1869; but we think the evidence conclusive. Wm Book, the acting clerk of Big Mound Town, certifies that there was an election held there at that time and gives the results. Transcript of Record, Page 27 and 28.

Michael Book swears that he *presumes* he was there and voted, as his name appears on the poll book. States that A. J. Armstrong was moderator of the election, and that the election was in favor of issuing bonds. Transcript of Record, Page 33.

Alexander Clark swears that he was present at the election of August 28, 1869, at Yates' School House; that there was an election to vote for or against the issuing of bonds for the donation; that he voted and saw others vote; that Wm. Book was Clerk of the election. Transcript of Record, Page 35 and 36.

Samuel Yates swears that the election of August 28, 1869, was held for the purpose of voting for or against the issuing of bonds for the donation to the Illinois Southeastern Railroad; that there had been a previous election held at Little Mound for the donation of $5,000 to the Illinois Southeastern Railroad. At the August election, 1869, Jack Armstrong was moderator, and Wm. Book, Sr., Clerk; he says he voted and saw others vote; that Wm. Book, Sr, the Clerk of that election, *is dead*; that the *district Supervisors*, M. H. Harris and Jacob B. Borah, had been elected in the year 1867; that he did not know personally that any notices of the election of August 28, 1869, were posted, but that Billy Book told him that there were notices, and that he had posted up notices for an election to vote for or against giving bonds. Transcript of Record, Page 35.

Here then is the testimony of Michael Book, Alexander Clark and Samuel Yates, who were present and voted and saw others vote at the election of August 28th, 1869, at the Yates School House. They all agree that the election was to vote for or against issuing bonds for their donation to the Railway Company, and agree that J. Armstrong was moderator, and Wm. Book, Sr., Clerk of the election, and this testimony is corroberated by the entry in the Town Clerk's book of that date, August 28, 1869. Transcript of Record, Page 27 and 28.

This testimony was taken *about eleven years after that election*, and while these witnesses swear that they did not see posted notices, they all swear that there might have been, and they not have seen them. At any rate the fact that *they were there and voted and saw others vote, and the record entry of the Town Clerk, shows beyond question that there was such an election.*

The time and place of holding this election we do not regard as material. As to the place of holding the election, at Yates School House, we can only say that the voters voted "*at an election held at Little Mound, "on Tuesday, the 6th of April*, 1869. *The vote was taken where the next "election should be held, and by the voice of the electors it was moved to the "Yates School House, in Big Mound Prairie.*"

Transcript of Record, page 31.

Here, among the entries of the Town Clerk, is found a vote of the electors *to change the place of the next town meeting to Yates School House*, where the election of August 28, 1869, was held. *The place*, then, was in strict accord with a vote of the electors, and the time, whether at a regular or special town meeting, is not material, and either was a compliance with the Amendatory Act of 1869. Private Laws of Illinois, Vol. 3, 1869, page 310 and 311, Sec. 5.

The fact of the election of August 28, 1869, if it was ever necessary to the validity of these bonds, is fully established by the above testimony, and as to any irregularities or omission to post notices, if any occurred, the Town of Big Mound is estopped from pleading them in a case like this between the Town of Big Mound and an innocent holder of her bonds purchased long before due, for value paid.

EXECUTION OF THE POWER CONFERRED BY THE ACTS OF FEBRUARY 25, 1867, AND THE AMENDATORY ACT OF FEBRUARY 24, 1869, AND THE ELECTIONS OF NOVEMBER 10, 1868, AND AUGUST 28, 1869.

Counsel for appellants claim that even if there was power to issue the bonds under the Acts of 1867 and 1869, and the elections thereunder by proper corporate authorities. That there was in this case such defective execution of that power as would render void the bonds even in the hands of an innocent purchaser for value before due.

Under an act of the Illinois Legislature, in force February 28th, 1867, (Public Laws of Illinois, 1867), it provides that the County of Wayne, Illinois, shall be divided into four Electoral Districts. That each Dis-

trict shall have one Supervisor, except the 2d, consisting of the Townships of Big Mound, Lamard, Jasper and Barnhill, which shall have *two Supervisors*. Under this act there was no other Supervisors to act for the townships except *these District* Supervisors, and express authority is given to a Justice of the Peace to act for the townships, who was to be selected by the Town Clerk, Town Assessor and Town Collector, in matters that did not come within the duties of the Supervisor. Public Laws of Illinois, 1867, page 103, Sec. 7.

Under this Act, Big Mound, Lamard, Barnhill and Jasper Townships all united in electing M. H. Harris by 251 votes, and J. B. Borah by 213, as Supervisors of the Second District, May 18th. 1867. Transcript of Record, page 25

Big Mound Township also held the election of August 28, 1869, while they were under this district system, and had no other Supervisor who could act for their Town but Harris and Borah.

The bonds are signed by M. H. Harris and J. B. Borah, *Supervisor*, and by William Book, *Clerk*. They do not sign as *District* Supervisor, but as the Supervisor of the Township; and the Clerk does not sign as *Deputy* Clerk, but as *Clerk*. Discharging the duties and functions of Clerk and Supervisor under the Township organization.

Wm. Book was appointed "*Deputy* (or acting) *Clerk for the time being* "*in Big Mound Town, this July 22d*, 1869," by the Clerk duly elected, John N Upton. Transcript of Records, page 31.

He was the *de facto* Town Clerk and custodian of the records, and the people accepted his acts, as such clerk in the election at Yates' School House and other matters of record. M. H. Harris signs himself as *Supervisor of Big Mound Township on his sworn certificate*, filed with the State Auditor to procure the registration of these bonds, July 16, 1870. Transcript of Record, page 19.

These officials, the Supervisor and Town Clerk, were acting as the parties named in the Amendatory Act of 1869, (Vol. 3, Private Laws 1869, page 313, Sec. 10,) and designated to sign and countersign the bonds issued thereunder.

As officers named in the Act of 1869, after the elections held in Big Mound Township, and the acting officials in executing and delivering the bonds, their acts were binding upon the Town, whether they were officers *de jure* or not.

It is a well settled principal that the acts of officers *de facto*, are as valid and effectual, when they concern the public, *or the rights of third persons*, as though they were officers *de jure*.

Trumbo vs. The People, .75 Ills. Reports, page 561.

King vs. Corporation of Bedford, Level, 6th East 369.

Until an officer *de facto* is in some lawful way adjudged to hold the office and perform its duties without authority of law, his acts must be regarded valid.

Mapes vs. The People, 69 Ills. Reports 523.

10 Ills. Reports, page 105, The People vs. Ammons.

In 24 Ills., page 184, People *ex rel.* Ballou vs. Bangs, the Court says: "Though a Judge elected under a law not authorized by the constitution, "shall be omitted, because he is not an officer *de jure;* yet his act *colore* "*officii* will be valid."

CONSTITUTIONALITY OF LAW OF FEBRUARY 27TH, 1867.

Appellant contends that the Act of February 27th, 1867, which authorized certain changes in the time and manner of holding township elections in the county of Wayne (Page 103, Public Laws of Illinois, 1867), was unconstitutional and void, under section 23, article 3, constitution of 1848, because:

1st—The title of said Act gave no intimation of the subject of the Act.
2d—Said Act contains more than one subject matter.

1ST—TITLE SUFFICIENT.

The clause of the section of the constitution of 1848, referred to, reads as follows, viz: " * * * And no *private*, or local law, which "may be passed by the General Assembly, shall not embrace more than one "subject, and that shall be expressed in the title." * * *

(*a.*) This act is not a "*private* or local act," section 8 of the act enacts that "this act shall be deemed and taken *as a public act*, and be in force "from and after its passage." (See Sec. 8, page 105, Public Acts of Illinois, 1867.) This declaration makes it a public act. Pollock vs. Clurken, 42 Ills. 370.

(*b.*) The title of this act is "An act to change the time of electing offi- "cers in a county therein named." It appears under the head of "elections," in the published Statutes of that year. The change of time was the most important provision of the act. The entire contents of the statute need not be expressly, and definitely set forth in the title. Any expression which calls attention to the general subject of the bill is sufficient. It called attention in a general way to a change in laws governing township elections in the county "therein named," viz: Wayne county. It was clearly within the requirements of the constitution.

Johnson vs. The People, 80 Ills., 432.
City of Ottawa vs. The People, 48 Ills., 233.
Erlinger vs. Boneau, 51 Ills., 94.
Burke vs. Monroe county, 77 Ills., 610.

In "the City of Ottawa vs. The People, the Court said the adjuncts and "*modus operandi* of accomplishing the object of the statute need not be "stated in the title."

In "Burke vs. Monroe county," the Court said, "Provisions germain to the general object need not be expressed in the title."

2D—ONE SUBJECT MATTER.

This act does not embrace more than one subject. Every section of the act is germain to its general objects, viz: Changing the time and manner of holding township elections in the county of Wayne. They are not destinct and independent provisions, and hence are not within the clause of the constitution, forbidding more than one subject matter in a single act.

Ross vs. C., B. & Q. R. R. Co., 77 Ills., 127.
Binz vs. Weber, 81 Ills., 288.
Burke vs. Monroe county, 77 Ills., 610.
Prescott vs. City of Chicago, 60 Ills., 121.
Neifing vs. Town of Pontiac, 56 Ills., 172.
Belleville Railroad Company vs. Gregory, 15 Ills., 20.

In "Neifing vs. Town of Pontiac," the Court held that an act entitled, "An Act to extend the corporate powers of the Town of Pontiac," the body of which *restricted* in some respects, as well as *enlarged* the corporate powers of the said town, was not in conflict with the clause of the constitution, confining an act to a single subject.

3D—UNCONSTITUTIONALITY MUST BE CLEAR AND PALPABLE.

Even admitting that the title of the act is somwhat defective, its provisions are clear and definite, and there is no such non-compliance with the constitution as will render the act unconstitutional and void. The violation of the constitution must be plain and palpable, or the statute will not be declared unconstitutional.

Bureau county vs. C., B. & Q. R. R. Co., 44 Ills., 229.
People vs. Solomon, 46 Ills., 333.
Mc Veagh vs. City of Chicago, 49 Ills., 318.

Counsel for appellants aver that the Supreme Court of the State of Illinois has held these bonds void, and that this Court will follow such decision. (Citing Fairfield vs. Gallatin county, 10, Otto 47, in support of

their position.) While fully aware of the rulings of this Court on this question, we do not think the Supreme Court has held these bonds void on any fair presentation of the facts, as can easily be shown by the decision referred to by counsel for appellants. (Shaeffer vs. Bonham *et al.*; Ills. Reports, Vol. 95, page 368; *also* reported in 2 N. W. Rep. Ills., Sup. 70.) It will be noticed, and we invite the special attention of this Court to these facts. That the opinion of the Supreme Court of Illinois was *filed at Mt. Vernon, June 14th*, 1880, while this case at bar was pending in the United States Circuit Court for the Southern District of Illinois. This bill being filed in the Wayne County Circuit Court, Illinois, at the October term, 1879, and removed to the United States Circuit Court for the Southern District of Illinois, at the same term, to-wit: October 21st, 1879. (Transcript page 1 and 15 and 16), and tried in the United States Court September 13th, 1880. Transcript page 39.

The solicitors, in the case at bar, are *Edwin Beecher and James McCartney*. (Transcript, page 8.) Who sign the bill as solicitors, and page 29, Transcript, were they sign the replication, and are the attorneys who appear of record in the case of Schaeffer *et al.* vs. Bonham *et al.*

Edwin Beecher appearing for the plaintiff in error, and James McCartney for the defendant in error. 95 Ills. Report, pages 369 and 372. *That decision was obtained on an agreed state of facts, about which the attorneys say there is no disagreement about the facts.* "The main question is as to "the *constitutionality* of the law set forth in the pleadings." Ills. Reports, 95, page 369. They admit that *the bondholders are not parties to that suit.* Page 372, Sup'r.

The facts in the case at bar, and that of Shaeffer *et al.* vs. Bonham *et al.*, are, we claim, materially different, and so widely different in themselves, and in their effect in law, that under *that decision*, had the same facts been presented, as in the case at bar, the bonds of Lamard Township would have been declared valid by the Supreme Court of Illinois. The opinion of the Supreme Court is based, in that case, on the ground that *there was no vote of the people for the issuing of the bonds.* The Court says: "We "have seen the people had not voted to create a debt, or to issue bonds, "and the General Assembly had no power to authorize these officers to "create a debt." * * *

That in the case at bar there was, not only, the election of November 10th, 1868, on the optional proposition to donate $5,000, *or issue bonds*, but also the election of August 28th, 1869, at the Yates School House, for the purpose of voting directly *on the question of issuing the bonds*, and both resulting in a majority of the voters favoring the issue of the bonds.

Here the electors did vote twice on the question of obligating themselves to pay $5,000 in aid of the Southeastern Railroad Company, and both times, under the clear directions of the Legislative acts of the State of Illinois, and in pursuance of those laws and those elections, the officials designated by the Acts of the Legislature, and the officials of the township, who always execute its contracts and who, at least, always act for the corporate authorities, with the public and third parties, sign the bonds, not as *District Supervisors*, but as the regularly elected and acting Supervisors of the town (and there were no others), and as the Town Clerk; thus making the bonds appear on their face, and by their recitals, regular in every particular. If under this statement of facts, these bonds are not valid, in the hands of an innocent holder, for value purchased before due, and after nine years of interest paid semi-annually, without notice of any kind, of any defect in their issue.

The Supreme Court of Illinois say, as above quoted: "*We have seen* "*that the people had not voted to create a debt or to issue bonds.*"

If this language is to be used in its ordinary significance, then on the facts submitted in that case, there was no evidence presented to them of the election of the 10th of Nov., 1868; or they must have concluded *that a donation to pay* $5,000 *was not a debt.* If an obligation to pay $5,000 in three years, in three equal instalments, which could be enforced in any court of law of competent jurisdiction, *is not a debt*, we cannot conceive how a municipality could create *a real debt*, and one that they could be made to pay.

This court does not always follow the decision of the State Supreme Court, and if the case at bar was analogous to the case of Schaeffer vs. Bonham, should claim that it furnished a case for this court in the interests of commercial law to overrule its decision.

But as it is entirely a different case, in the facts upon which it is grounded, in the important matter of the vote of the electors, Aug. 28th, 1869, in addition to the recitals of the bonds; we think this court not bound at all by that decision—as the reason given in that case as the ground upon which it is based, is supplied in this. In the case of Schaeffer et. al., vs. Bonham, the court does not declare the Act of February 28th, 1867, *unconstitutional*, they simply decide that the District *Supervisors*—acting alone as such district supervisors—cannot make a bond that will bind the township without a vote of the township they represent.

The law of February 28th, 1867, does not attempt to take the legal power from the people and the officers they name to vote and issue bonds—it only enacted that these District Supervisors might sign the bonds

after the people had, by their vote, authorized their issue. The people were the authority, and in this case, we claim, had twice exercised their power by an election duly held for that purpose, and the Supervisor and Clerk were merely ministerial officers for executing the power of the people. These officers acted in the name of, and for the town of Big Mound, and had been elected by the voters to act for them in the discharge of these very duties.

The Court says further in *Shaeffer vs. Bonham*, page 380: "The electors did not create a debt, but to raise by taxation on their property a sum of money to be given to the Railroad as a donation. Had the township voted to incur a debt, and the bonds had been issued by a person named by the General Assembly, different from the corporate authorities, then payment of interest and acquiescence for such a length of time might have operated as an estoppel." * * *

If there is any such doctrine as estoppel, this is a most proper case for its application.

The decisions of the Supreme Court of the State of Illinois in cases arrising upon the same statute, and a similar state of facts are not conclusive on this Court, as such decisions do not present a case of statutory construction. Town of Venice vs. Murdock, 92 U. S., 494.

A decision of the State Court is not conclusive, where private rights are determined by the rules of the common law on commercial paper. 2 B. K., page 418.

Bailey vs. City of Muscatine, 8 Wallace, 584.

Swift vs. Tyson, 16 Peters, 19.

RECITAL ON THE BONDS.

In section 13, of the Amendatory Act of February 24, 1869, Private Laws of Illinois, 3d Vol., page 314, it is provided: "That where payment of subscriptions to the capital stock of said company have been, or shall be made, by villages, cities, counties or townships, under any act authorizing such subscriptions or donations to be made, all such bonds issued or negotiated by the proper authorities of such villages, cities, counties or townships, and appearing regular on the face thereof, *shall, in the hands of said company, or any other bona fide holder thereof, be deemed and taken, in all courts and elsewhere, as prima facie evidence of the regularity of everything required by the several acts to be done preliminary to the issuing and negotiation of said bonds.*"

Under this law these bonds appearing regular on their face, in the hands of said railroad company *or any other bona fide holder thereof*, were declared to be deemed and taken in all courts and elsewhere, as *prima facie* evidence of the regularity of everything required by the several acts to be done preliminary to the issuing and negotiating of said bonds. This Act embodies the settled doctrine of this Court, well defined at that time and strictly adhered to ever since as to recitals.

In addition to this express statute on that subject the Supervisor, M. H. Harris, who signs them and procures their registration, swears that all the necessary steps preliminary to their issue and registration have been duly taken and the laws complied with. Transcript of Record, page 19.

On the face of the bonds is the following recitals :

"This bond is one of a series of bonds issued by said township to aid in "the construction of the Illinois Southeastern Railway, in pursuance of "the authority conferred by an Act of the General Assembly of the State "of Illinois, entitled, "An Act to Incorporate the Illinois Southeastern "Railway Company, approved February 25, 1867," and "An Act Amenda "tory thereof, approved February 24, 1869," and an election of the legal "voters of the aforesaid township, held on the 10th day of November, 1868, "under the provisions of said act."

Exhibit A, Transcript of Record, page 19 and 20.

Reference is here made to the law of 1867, and the Amendatory Act of 1869, and to the election of November 10, 1868. The election of August 28th, 1869, is not here set out in words, *but the Act under which it was held, that of* 1869, *is specially referred to as part of the authority* under which the bonds were issued, and is as binding on the Town of Big Mound as to the effects of the recital, as if the date and place, and result of that election had been spread at length upon the face of the bonds.

It is a well settled doctrine that all irregularities in elections, or in the execution of the bonds, are cured by the certificates of the officers issuing the bonds, and their recitals, and especially is this the rule as to bonds in the hands of innocent holdess.

Commissioners vs. Bolles, 94, U. S. 104.

Commissioners vs. Jannary, 94, U. S. 202.

Town of Coloma vs. Eaves, 92, U. S. 484.

Town of Venice vs. Murdock, 92, U. S. 494.

San Antonio vs. Mehaffey, 96, U. S. 312.

In this case we think the power to issue these bonds was ample and that the law, in their execution, was substantially complied with by the *de facto* and *de jure* officials of Big Mound Township, and that there are no such errors in the records as can render them invalid, and we ask that the decree of the United States Circuit Court for the Southern District of Illinois be affirmed.

GEORGE A. SANDERS.

Solicitor for John A. Kasenkam, Appellee.